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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 47

VIRGINIA LAMEER, APPELLANT,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

APPEAL FROM THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

Filed August 11, 1956.

Jurisdiction noted November 19, 1956.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 590

VIRGINIA LAMBERT, APPELLANT,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

Filed August 11, 1956

Jurisdiction noted November 19, 1956.

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1 MUNICIPAL COURT OF LOS ANGELES
JUDICIAL DISTRICT

County of Los Angeles, State of California

No. 33463

PEOPLE OF THE STATE OF CALIFORNIA, *Plaintiff*,

vs.

MISS VIRGINIA LAMBERT, *Defendant*.

Docket Entries

CR. A 3411

Feb. 2, 1955

$500.00 Surety Bond filed.

Feb. 3, 1955

Complaint filed sworn to by G. Kritzman charging the Defendant with having on Feb. 2, 1955 at Los Angeles City, in the County of Los Angeles, State of California, committed a misdemeanor, to-wit:

VIOLATION SUBDIVISION (A) SECTION 52.39 LAMC

Feb. 3, 1955

Cause called. Judge Lippold presiding. Both parties ready. People represented by J. C. Denny (D.C.A.). Defendant represented by S. McMorris. Defendant in court duly arraigned, informed of the charge against him and of his legal rights. Defendant gives true name as charged and asks time to plead.

Ordered to appear and plead 2-17-1955 at 9:30 a.m.

Defendant personally waives statutory time for plea.

Bail up to stand.

Feb. 17, 1955

Cause called. Judge Lippold presiding. Both parties ready. People represented by J. C. Denny (D.C.A.). Defendant in court and represented by Samuel C. McMorris.

Cause continued to 3-3-1955 at 1:30 p.m. for hearing on demurrer.

Bail up to stand.

Mar. 3, 1955

Cause called. Judge Lippold presiding. Both parties ready. People represented by Walter Foster (D.C.A.). Defendant represented by S. McMorris. Defendant in court, demurrer overruled, enters his plea of NOT GUILTY of the offense charged.

Defendant personally waives statutory time for trial.

Defendant with counsel in open court each personally demands jury trial.

Jury trial set for April 14, 1955 at 9 a.m. in Division 7.

Bail up to stand.

Apr. 14, 1955

In the following case Naomi Spector reporter is ordered to take down proceedings as provided by law.

Cause called. Judge Parks Stillwell presiding. Both parties ready. People represented by Arthur A. McCardle (D.C.A.). Defendant in court and represented by S. McMorris.

Transferred to Division 18 for trial.

2 Apr. 14, 1955

In the following case Wm. A. Weigel reporter is ordered to take down proceedings as provided by law.

Cause called. Judge Byron J. Walters presiding. Both parties ready. People represented by Wm. Doran (D.C.A.). Defendant in court and represented by S. McMorris.

On motion of the City Attorney, and leave of court first obtained, an amended complaint filed.

Defendant informed by Court of constitutional rights.

Pleads not guilty.

The following jurors were sworn, examined and accepted:

1. Louis Zinger
2. Wm. H. Nicholas
3. Arthur L. Hammerstrom
4. Delmar W. Barber
5. Wm. H. Tomlinson
6. Mrs. Patricia B. Hunton
7. Leroy H. Grace
8. Samuel Miller
9. Mrs. Florence C. Meginniss
10. Harry J. Beckman
11. Mrs. Edna Hemmingren
12. Mrs. Smilka Radjenovich

Jury sworn to try cause.

Defendant's objection to introduction of offered evidence and to introduction of any evidence, on the ground that the complaint does not state a public offense.

Defendant's objection argued outside of presence of jury.

At 12 noon cause continued to 2 p.m.

Jury admonished.

At 2 p.m. cause called. Stipulated that jury and all parties are present as before.

Defendant's objection argued outside presence of jury.

Objection sustained with the provision that people are granted to 10 a.m. 4-15-1955 to file a second amended complaint, if so advised.

At 4:15 p.m. cause continued to 4-15-1955 at 10 a.m.

Jury admonished.

Bail up to stand.

Apr. 15, 1955

In the following case Wm. A. Weigel reporter is ordered to take down proceedings as provided by law.

Cause called. Judge Byron J. Walters presiding. Both parties ready. People represented by W. Doran (D.C.A.). Defendant represented by S. McMorris. Defendant in court, duly arraigned, informed of the charge against him and of his legal rights. Defendant gives true name as charged and enters his plea of not guilty of the offense charged.

Second amended complaint filed.

Defendant waives reading of complaint.

Bail to remain the same.

People's Exhibit's filed "1" judgment 142412
"2" " 142123
"3" " 142412

Witnesses sworn and examined for people:
Edmund Flaherty
Rosa Chavez
People's Exhibits filed "4" by reference file 142412
"5" " 142123

People rest.
Witness sworn and examined for defendant:
Virginia Lambert
Motion argued outside presence of jury.
Jury excused and admonished.
Cause continued to 2 p.m.
Cause called 2 p.m. outside presence of jury.
At 2:50 p.m. jury returned to court room and were excused to 4-18-1955 at 10 a.m.
Jury admonished.
At 3 p.m. cause continued to 4-18-1955 at 10 a.m.
Bail up to stand.

Apr. 18, 1955
In the following case W. Weigel reporter is ordered to take down proceedings as provided by law.
Cause called. Judge B. J. Walters presiding. Both parties ready. People represented by W. Doran. Defendant in court and represented by S. McMorris.
At 10 a.m. cause called.
4 Argument over objection, argued outside presence of jury.
At 12:15 p.m. cause continued to 2 p.m.
At 2 p.m. cause called. Stipulated that jury and all parties are present as before.
Miss Virginia Lambert resumes stand for defendant.
Defendant rests.
Cause argued, at 3:10 p.m. cause continued to 4-19-1955 at 10 a.m.
Jury admonished.
Bail up to stand.

Apr. 19, 1955
In the following case W. Weigel reporter is ordered to take down proceedings as provided by law.

Cause called. Judge B. J. Walters presiding. Both parties ready. People represented by W. Doran (D.C.A.). Defendant in court and represented by S. McMorris.

At 11:30 a.m. cause called. Stipulated that jury and all parties are present as before.

Jury instructed, reporter ordered to report instructions verbatim.

Jury retired this 4-19-1955 at 12:30 p.m. in charge of Art Wire.

Jury taken to lunch Harvey House 12:30 p.m. via Tanner.

Jury returned to deliberation room at 2:30 p.m.

At this 4 p.m. jury return into court with the following verdict:

"We, the jury in the above entitled cause, find the defendant GUILTY of the offense charged.

Henry J. Beckman Foreman".

Verdict filed.

Defendant's motion to dismiss under 1385 Penal Code.

Defendant's motion for new trial noted.

Cause continued to 4-25-1955 at 10 a.m. for hearing on new trial and sentence.

Bail up to stand.

Apr. 25, 1955

In the following case E. Rasmusson reporter is ordered to take down proceedings as provided by law.

Cause called. Judge Byron J. Walters presiding. Both parties ready. People represented by W. Doran (D.C.A.). Defendant in court and represented by S. McMorris. Defendant in court for hearing on motion for new trial.

Motion denied.

Defendant in court for sentence.

Defendant given summary probation on courts own motion.

Proceedings suspended without imposition of sentence and defendant placed on summary probation for a period of 3 years subject to the following terms of probation:

That defendant violate no law regarding public morals, safety or health, especially relating to Section 52.39 MC.

Defendant to pay $250.00 to clerk of court,

Stay to 5-2-1955 on fine.

Bail up to stand.

Apr. 29, 1955
Notice of Appeal filed with receipt of City Attorney.

May 4, 1955
Bond on appeal fixed in the sum of $500.00.

May 4, 1955
Proposed Statement on appeal filed with receipt of City Attorney.

May 9, 1955
$500.00 Surety Bond on appeal filed.

May 9, 1955
In the following case J. A. Morris reporter is ordered to take down proceedings as provided by law.
Cause called. Judge B. J. Walters presiding. People represented by F. Rothman (D.C.A.). Defendant not in court and not represented.
Upon defendant filing appeal bail, present bail ordered exonerated.

May 23, 1955
Notice Re-Reporter's Transcript filed.

6 May 31, 1955
Hearing to settle statement on appeal set for June 8, 1955, in Division 18 at 10 a.m.
Notices mailed with affidavits of service by mail.

Jun. 8, 1955
In the following case M. J. Ammerman reporter is ordered to take down proceedings as provided by law.
Cause called. Judge Walters presiding. Both parties ready. People represented by W. Doran (D.C.A.). Defendant in court and represented by S. C. McMorris.
Defendant in court for settling the statement on appeal. People's motion for continuance to 6-13-55 10 a.m.
Granted.
Cause continued to 6-13-55 at 10 a.m.
Bail up to stand.

Jun. 13, 1955
Notice of Appeal filed with receipt of City Attorney.

Jun. 16, 1955
Respondent's proposed amendments to Appellant's Proposed Statement on Appeal filed.

Jun. 20, 1955

Files on Appeal transmitted to the Appellate Dept. of Superior Court.

Jul. 5, 1955

Copy of Petition for writ of Mandamus served upon F. Ray Bennett, acting presiding Judge and said copy forwarded to the County Counsel's Office.

Jul. 18, 1955

Order dismissing appeal of June 13, 1955 filed.

Oct. 14, 1955

In the following case R. G. Osiel reporter is ordered to take down proceedings as provided by law.

Cause called. Judge Byron J. Walters presiding. People represented by W. Doran (D.C.A.). Defendant not in court and not present.

This matter having been held pending decision of Superior Court on writ of mandate directed to the power of this court to grant the people time to propose amendments to the statement on appeal and it appearing that such writ of mandate has recently been denied. It is therefore ordered that Respondents proposed amendments to the Appellants proposed Statement on appeal are and each of them is allowed.

Defendant's counsel is directed to re-engross defendant's statement on appeal on or before Oct. 21, 1955.

7 Oct. 20, 1955

In the following case R. G. Osiel reporter is ordered to take down proceedings as provided by law.

Cause called. Judge Byron J. Walters presiding. Both parties ready. People represented by W. Doran (D.C.A.). Defendant in court and represented by S. McMorris.

Motion filed and affidavit filed. Motion denied.

Oct. 21, 1955

Engrossed statement on appeal filed with receipt of City Attorney.

Nov. 16, 1955

In the following case M. Teplitz reporter is ordered to take down proceedings as provided by law.

Cause called. Judge Byron J. Walters presiding.

People represented by W. Doran (D.C.A.). Defendant no appearance.

Engrossed Statement on appeal certified and signed.

Clerk's Certificate to foregoing paper omitted in printing.

8 IN THE MUNICIPAL COURT OF LOS ANGELES

JUDICIAL DISTRICT

COUNTY OF LOS ANGELES
STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, *Plaintiff*,

VS.

MISS VIRGINIA LAMBERT, *Defendant*.

Second Amended Complaint—Filed April 15, 1955

Personally appeared before me, the undersigned, who, first being duly sworn, complains and says: That on or about February 2, 1955, at and in Los Angeles City, in the County of Los Angeles, State of California, a misdemeanor, to-wit: Violation of Subd. (a) of Section 52.39 of the Los Angeles Municipal Code was committed by Miss Virginia Lambert (whose true name to affiant is unknown), who at the time and place last aforesaid, being a person who, subsequent to January 1, 1921, had been convicted of an offense punishable as a felony on two occasions in the State of California, to wit: Violation of Section 470 of the Penal Code of the State of California on or about May 29, 1951 and on or about June 18, 1951 both times in Department 42 of the Superior Court of the County of Los Angeles, and whose conviction and convictions therefor had not been set aside in a manner provided by law prior to February 2, 1955, did wilfully and unlawfully be and remain in the City of Los Angeles for a period of more than five days without registering with the Chief of Police during such five day period, in the following manner, to-wit: filing with the Chief of Police a statement in writing, signed by such person, upon a form prescribed and furnished by the Chief of Police, giving the following information: his true name and all aliases which he has used or under which he may

have been known; a full and complete description of his person; the kind, character and nature of each crime of which he had been convicted; the place where such crime or crimes were committed and the place of conviction of the same; the name under which he was convicted in each instance and the date thereof; the name, if any, and the location of each prison, reformatory, jail or other penal institution in which he had been confined or to which he had been sentenced; the location and address of his residence, stopping place, living quarters or place of abode in the City of Los Angeles, and each such residence, stopping place, living quarters or place of abode which had been occupied or used by him in said City, stating whether such place of abode in which he resides is a private residence, hotel, apartment house or other building or structure; the length of time has occupied each such place of residence, stopping place or place of abode, and the length of time he expects to remain in such City; and permit and allow the said Chief of Police to take his photograph and finger-prints. All of which is contrary to the law in such cases made and provided, and against the peace and dignity of the People of the State of California. Said Complainant therefore prays that a warrant may be issued for the arrest of said Defendant .....that.....he....may be dealt with according to law.

Subscribed and sworn to before me on April 15, 1955.

ROBERT B. CONRAD
URBAN F. EMME,
Clerk of the Municipal Court of Los Angeles Judicial District, in said County and State.

By L. W. FOREMAN
Deputy Clerk

GEORGE J. BARBOUR

Appeal 5-9-55 $500 .SB Filed
(1952 Form LAMC 52.39(a)

9 S. McMORRIS

Municipal Court Proceedings

Date ..... Defendant in Court duly arraigned, informed of the charge against him and of his legal rights. Defendant gives true name as charged ..... and enters his plea of not guilty of the offense charged. Denies—Admits—prior conviction.....charged. Bail fixed at $.....Dollars.

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11 IN THE MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL DISTRICT

COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

~~(Title Omitted)~~

Defendant's Requests for Instructions (Given as Modified)

I

In order for the defendant to be found guilty of the offense alleged, it is necessary for the prosecution to prove, beyond the reasonable doubt of the jurors, all of the elements of the crime charged. In the present case, these elements include:

1. The defendant must be proven to have been or to have remained in the City of Los Angeles for a period of more than five days.

2. The defendant must have been previously convicted of an offense punishable as a felony in the State of California (or of certain other offenses not relevant here).

3. This conviction of a felony must not have been set aside in a manner provided by law.

If the prosecution fails to prove any one of the stated elements of this offense, the defendant must be found not guilty. Thus, even if it is proven that defendant has been convicted of a felony and that defendant has resided or remained in Los Angeles City for more than five days, she is nevertheless not guilty of this offense unless the prosecution proves beyond a reasonable doubt that this conviction has not been set aside.

There is no presumption that a conviction has not been set aside, nor is it necessary for the defendant to take the stand to prove that such conviction has been set aside.

12 Under Section 1203.4, Penal Code, every defendant who has fulfilled the conditions of his probation for the entire period thereof, or who shall have been discharged from probation prior to the termination of the period thereof, shall at any time thereafter be permitted by the court to withdraw his plea of guilty and enter a plea of not guilty; and the court shall thereupon dismiss the accusations or information against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted. When a conviction has been set aside in this manner, it is not necessary for such a defendant to register with the police department. Since a substantial number of convicted persons, especially first offenders, are placed upon probation and have their offenses subsequently dismissed under Sec. 1203.4, there is no presumption that a convicted person remains such; and the prosecution must prove that a conviction has not been set aside in this or any other manner provided by law.

This is not a situation when the burden of going forward shifts to the defendant, since the entire record is equally available to the prosecution and the facts thereof are not peculiarly the knowledge of the defendant. Cal. Jur. 2d, Sec. 108; Peo. v. Rodrigo, 69 C. 601; Peo. v. Yeager, 194 C. 452.

II

In order for the defendant to be found guilty of the offense charged herein, it is necessary for the prosecution to prove beyond a reasonable doubt that the defendant had guilty knowledge, intent, or what is known in the law as mens rea, a Latin phrase translated as criminal intent or guilty mind. In other words, the defendant must be found to have "knowingly" done wrong.

III

No person may be compelled, in any criminal case, to be a witness against himself. This means that a defendant may not be required to produce evidence to help convict himself. He may remain entirely mute throughout the course of the trial, and need not take the stand.

13 An accused has the right to stand mute, clothed in the presumption of innocence, until the prosecution

has made out a prima facie case against him, and until then it is reversible error to cross-examine him and comment on his failure to testify. (Peo. v. Talle (1952) 111 ACA 685.) In other words, the court and prosecutor may not make adverse comment regarding the accused's failure to take the stand in the absence of a prima facie showing of defendant's guilt. Peo. v. Zoffel, 35 CA 2d 215; Peo. v. Alkou, 97 CA 2d 797; Peo. v. Roberts, 122 C. 377; Peo. v. Streuler, 121 C. 431.

Jury instructed orally. See official reporter's record thereof ordered to be taken verbatim in shorthand.

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14 **Plaintiff's Proposed Instruction No. ___**
(Given as Modified)

YOU ARE INSTRUCTED that the date of the offense need not be proved as alleged. Any date within the period of limitation is sufficient.

Peo. v. Amaral, CR A 1143
Peo. v. Gitliff, 88 Cal. App. 589

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15 **Plaintiff's Proposed Instruction No. ___**
(Given as Modified)

YOU ARE INSTRUCTED THAT it shall be unlawful for any convicted person to be or remain in the City of Los Angeles for a period of more than five days, without, during such five-day period, registering with the Chief of Police in the manner hereinafter prescribed.

---

16 **Plaintiff's Proposed Instruction No. ___**
(Given as Modified)

YOU ARE INSTRUCTED that every person required by this section to register shall do so by filing with the Chief of Police of the City of Los Angeles a statement in writing, signed by such person, upon a form prescribed and furnished by the Chief of Police, giving the following information:

1. His true name and all aliases which he has used or under which he may have been known;

2. A full and complete description of his person;

3. The kind, character and nature of each crime of which he has been convicted;

4. The place where each of such crimes was committed and the place or places of conviction;

5. The name under which he was convicted in each instance and the date thereof;

6. The name, if any, and the location of each prison, reformatory, jail or other penal institution in which he was confined or to which he was sentenced;

7. The location and address of his residence, stopping place, living quarters or place of abode in the City; if more than one residence, stopping place, or place of abode, that fact must be stated and the location and address of each given;

8. A statement of the kind of residence, stopping place or place of abode in which he resides, whether the same is temporary or permanent, i.e., whether the same is a private residence, hotel, apartment house or other building or structure;

9. The length of time he has occupied each such place of residence, stopping place or place of abode, and the length of time he expects or intends to remain in the City;

10. Such other and further information as may be required by the Chief of Police for the purpose of aiding and assisting in carrying into effect the provisions and intent of Sections 52.38 to 52.43, inclusive.

18 IN THE MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL DISTRICT

COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

(Title Omitted)

Defendant's Requests for Instructions

(Refused)

IV. Intent, Wilfulness

In every crime or public offense there must exist a union, or joint operation of act and intent, or criminal negligence.[1] Persons who committed the act or made the omission charged under an ignorance or mistake of fact, which disproves any criminal intent, are not guilty of the crime alleged.[2] There can be no union of the act and intent necessary to constitute a crime unless the act be done "wilfully" or "knowingly."[3] An information which charges that a person "wilfully and unlawfully" performed an act is equivalent to alleging that he knowingly did so.[4] Wilfully imports a design to do the specific act.[5] To do a thing willfully is to do it by design, with set purpose. A purpose or willingness to commit an act renders it wilful.[6] An act is wilfully done when done with deliberation, and not through surprise or confusion, or a bona fide mistake.[7] The person doing an act wilfully is fully conscious of and knows what he is doing, and knows all the circumstances connected therewith which make the doing wilful.[8] Wilful acts and omissions are conscious acts and omissions; acts and omissions the possible consequences of which are considered and weighed and present in the mind.[9] An act is wilfully done when done designedly, intentionally, or perversely, and without reasonable excuse. "Knowledge"

1 Sec. 20, Penal Code.
2 Sec. 26, Penal Code.
3 Peo. v. Forbath, 5 CA 2d Supp. 767, 42 P. 2d 108.
4 Peo. v. Odom, 19 CA 2d 641, 66 P. 2d 206.
5 In re Ahart, 172 C. 762, 159 P. 160.
6 68 C. 434, 9 P. 457.
7 Peo. v. Sheldon, 68 C. 434, 9 P. 457.
8 Peo. v. Calvett, 93 C. 568.
9 Pupke v. Pupke, 79 P. 2d 290.

has been defined as actual information of fact. For an act to be done knowingly, it must be done with knowledge of actual facts, and must be done intentionally.[10]

Respectfully submitted,

SAMUEL C. MCMORRIS
Samuel C. McMorris
Attorney for Defendant

IN THE MUNICIPAL COURT OF LOS ANGELES JUDICIAL DISTRICT

COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

(Title Omitted)

Engrossed Statement on Appeal

BE IT REMEMBERED that the above entitled cause came on regularly for trial in Division 18 of the above-entitled court, on the 21st day of April, 1955, before the Hon. Byron J. Walters, judge, presiding, the plaintiff being represented by W. Doran, Esq., Deputy City Attorney of the City of Los Angeles, and the defendant being represented by Samuel C. McMorris, Esq., her counsel.

The complaint against the defendant and appellant Virginia Lambert charged that on or about the 2d day of February, 1954, a misdemeanor, to wit: violation of Subd. (a) of Section 52.39 of the Los Angeles Municipal Code was committed by Miss Virginia Lambert, who at the time and place last aforesaid, being a person who, subsequent to January 1, 1921, had been convicted of an offense punishable as a felony on two occasions in the State of California, to wit: Violation of Section 470 of the Penal Code of the State of California on May 29, 1951 and June 18, 1951, both times in Department 42 of the Superior Court of the County of Los Angeles, did wilfully and unlawfully be and remain in the City of Los Angeles for a period of more than five days without registering with the

[10] Green v. Stewart, 106 Cal. App. 518; 289 P. 940, 944.

Chief of Police during such five day period, etc., as will more fully appear from the complaint on file herein.

A jury was duly impanelled.

The court discovered an error in the date of the alleged offense in that the year 1954 was designated, instead
21 of the year 1955, whereupon the Court called counsel to the bench and it was stipulated and agreed by counsel for the parties hereto that the complaint might be amended to designate the correct year. A recess was called for this purpose.

At the end of the recess, court was reconvened, the defendant was arraigned upon the First Amended Complaint, designating the date of the alleged offense as in 1955, and a plea of not guilty was entered thereto.

The People offered testimony and introduced evidence as follows:

Certified copies of the judgments in cases No. 142412 and 142123 in the Superior Court of the State of California, in and for the County of Los Angeles purporting to be judgments of conviction of the defendant in the cases specified in the complaint herein, and a certified copy of an order in the said case No. 142412, purporting to modify the probation of defendant, were offered as plaintiff's exhibits 1, 2, and 3, respectively, after being so marked for identification.

Defendant objected to the offer of this or any further evidence by plaintiff on the ground that the complaint failed to state a cause of action in that Sec. 52.39 of the Municipal Code is unconstitutional as regards both the State and Federal constitutions, for the following reasons: denial of equal protection; denial of due process; conflict with general law; self-incrimination; additional punishment; cruel and unusual punishment; police abuse of the ordinance in this case; unreasonable exercise of police power; unreasonable search and seizure.

After due argument, the Court denied the objection of defendant as to the claim of unconstitutionality. The Court held, however, that the complaint did not state a cause of action in that it failed to negative the exceptions specified in Subs. (f) of 52.39, to wit: that it did not appear from the complaint that the conviction of defendant of

the designated felonies had not been set aside in a manner provided by law.

The Court read into the record a memorandum opinion in case number 40099 in the Municipal Court of the Los Angeles Judicial District, in which the Court held, inter alia, that it was necessary to allege and prove that defendant had not had his record set aside in a manner provided by law. The court recessed until the next day to give the plaintiff a chance to amend the complaint in conformity thereto.

At the conclusion of the overnight recess, the Second Amended Complaint of plaintiff was introduced, and defendant pleaded not guilty thereto.

Plaintiff thereupon offered testimony and introduced evidence as follows:

Plaintiff's Exhibits 1, 2, and 3, as above specified, were introduced. Defendant objected on the same constitutional grounds as upon the previous offer of the said exhibits. Objection was overruled and the exhibits admitted.

Counsel for plaintiff and defendant then stipulated that defendant had resided in the City of Los Angeles, and had been and remained there, for the period specified by the ordinance and the complaint, and in fact for a seven-and-one-half year uninterrupted period.

Plaintiff then called Rosa Chavez as witness, whereupon defendant stipulated that her conviction had not been set aside in a manner provided by law at the time of her arrest.

Plaintiff called Edmund Flaherty as witness, whereupon defendant stipulated that she had not registered with the police department prior to her arrest.

Thereupon plaintiff rested its case.

Defendant took the stand and offered to prove that she did not know that she had a duty to register at or before the time of her arrest. Plaintiff objected to this testimony, and the court sustained this objection.

Defendant then offered to testify that she did not know that the crime of which she had been convicted was punishable as a felony. To this plaintiff objected. The Court overruled this objection. Defendant then testified as follows:

That she had no knowledge that the crime of which she

was convicted was punishable as a felony, that she fainted at the time of the pronouncement of her sentence, that she was throughout the proceedings which led to her conviction on two counts of forgery in a confused mental state and did not fully understand the nature of the proceedings, that she did not understand the difference between a crime punishable as a felony and other crimes, but that she
23 thought that, unless a person was confined in Tehachapi or Chino or San Quentin, that the crime involved was not punishable as a felony, whereas the only institution in which she had been confined was the County jail as a result of her conviction, and that she had not been informed by her former attorneys, by the probation officer, or any other officer that the crime she had been convicted of was punishable as a felony.

Defendant further testified on cross-examination that she heard the charges read on her arraignments in the Superior Court; that she had conversations with a Deputy Public Defender concerning the forgery charges, and that she entered pleas of guilty to the charges of forgery, and was present in court when the judgments were read.

Whereupon the defense rested.

The Court then charged the jury orally. The substance of the charges upon which this appeal is based in part is as follows, but notice is hereby given that, if required, the whole of the Court's instructions will be supplied by reporter's transcript:

The Court refused Defendant's Requested Instruction No. 4 re Intent, Wilfulness, which is filed as a part of the record herein. On the other hand, the Court, inter alia, quoted Secs. 7 (1) and 7 (5) of the Penal Code re intent. The Court further instructed the jury that defendant was guilty if she knew, at the time of her failure to register with the Chief of Police as charged, that she had been found "guilty of a crime punishable as a felony," that forgery is a crime punishable as a felony, and that ignorance of the law requiring Registration is no excuse. The court further instructed as to all other applicable law.

The jury retired and returned a verdict of "Guilty as charged."

Whereupon defendant moved the Court for a dismissal in the interest of justice on the grounds that (1) no evidence or insufficient evidence, at least, had been introduced

by the prosecution to sustain the charge in view of the circumstantial evidence rule that, where there are two possible reasonable theories, one pointing to guilt, the other to innocence, the defendant must be found guilty; (2) that the defendant is only very technically in violation of the ordinance involved in view of her right under Penal
24 Code 1203.4 to have her conviction set aside, which right she subsequently exercised so that she comes within the exception specified in Section 52.39 (f) of the Municipal Code; and (3) that in this case a conviction would not serve the purpose of vindicating the will of the State but would instead be a vindication of the will of two police officers who had made a false arrest and were using the ordinance in an effort to justify that arrest, as an afterthought.

The Court denied the said motion. The defendant indicated intention to move for a new trial. The date of hearing thereon was set for the 25th day of April, 1955, at 10:00 a. m.

At the time appointed for the hearing of the said motion, defendant moved for arrest of judgment on the ground that the ordinance alleged to be violated is contrary to the letter and spirit of the Federal and State Constitutions for the reasons hereinabove specified, and upon the further ground that, even if it should be conceded that the ordinance is valid on its face, that its misuse in a specific case or series of cases, including the one at bar, would render it unconstitutional in this specific instance. In support of this position, defendant offered to testify that on the date of her arrest on the alleged violation of 52.39 Municipal Code, she was accosted on the street corner by the two arresting officers, who, without informing her of the reason of their arrest or detention of her, began a search of defendant's person and effects, apparently for dope, by rolling up the sleeves of her coat and inspecting her veins and rummaging through her purse; that, when she protested this conduct, she was handcuffed and roughly shoved into the rear of the prowl car driven by the arresting officers; that at the time of her arrest, she was in the company of her employer and attorney, who attempted to discuss the matter with the arresting officers, who ignored him; that she was taken to Wilshire Station and there interrogated for two hours in an offensive and insulting manner, and disrobed and fur-

ther searched about her person, all without being told the reason for her arrest; that, while she was there detained, her attorney and employer requested prmission to talk to her, but that such permission was refused by the lieutenant in charge; that, after their investigation and interrogation failed to reveal that she was engaged in any present criminal conduct, that the lieutenant "decided" to book her on a charge of failure to register as an ex-convict; that that was the first time that she had been informed of any charge upon which she was being held; and that no effort was made to permit her to register in lieu of being further held by them and booked.

The Court denied this proffer of evidence by defendant, and denied defendant's motion to arrest judgment.

Defendant then moved for a new trial on the grounds that: (1) the verdict was contrary to law and evidence, and (2) the Court had misdirected the jury in matters of law and had erred in the decision of questions of law arising during the course of the trial.

Defendant's motion was denied. The Court suspended the imposition of sentence and placed defendant on three year's summary probation on condition that she violate no law dealing with public health, welfare, or morals, and in particular Section 52.39 of the Municipal Code and on the further condition that defendant pay forthwith to the Clerk of the Municipal Court the sum of $250.00.

Defendant will base her appeal upon all adverse rulings hereinabove specified, including, but not limited to:

(1) The admission of evidence herein in view of the unconstitutionality of the ordinance, as hereinabove specified.

(2) The Court's rejection of testimony as to defendant's ignorance of her duty to register.

(3) The Court's denial of defendant's motion for dismissal in the interest of justice.

(4) The Court's refusal of defendant's Request for Instructions No. 4.

(5) The Court's quoting of Sec. 7(5) of the Penal Code.

(6) The ambiguity in the Court's instruction regarding defendant's knowledge of the punishability of her prior crime.

(7) The Court's instruction, under the circumstances of this case, that ignorance of the law is no excuse.

(8) The Court's denial of defendant's motion to arrest judgment.

26 (9) The Court's denial of defendant's motion for a new trial.

(10) The Court's judgment.

Respectfully submitted,

SAMUEL C. McMORRIS
Samuel C. McMorris
Attorney for Defendant

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27 IN THE MUNICIPAL COURT

Judge's Approval of Statement on Appeal—Filed Nov. 16, 1955

The Court does now settle and allow the foregoing Statement on Appeal and certifies that the same is a true and correct statement of the proceedings had in the above entitled action.

WALTERS
Judge of the Municipal Court

Dated: Nov. 16, 1955

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28 IN THE MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL DISTRICT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

(Title Omitted)

Notice of Appeal

The defendant in the above entitled cause hereby appeals to the Appellate Department of the Superior Court of the State of California in and for the County of Los Angeles from the order of the above entitled court made and entered on the 25th day of April, 1955, denying defendant's motion for a new trial and from the final judg-

ment of conviction rendered and pronounced by the above entitled court on the 25th day of April, 1955.

Dated: April 25, 1955.

SAMUEL C. McMORRIS
Attorney for Defendant and appellant.

Nov. 4, 1955

Bond on appeal fixed in the sum of $500.00.

WALTERS,
Judge

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29 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, APPELLATE DEPARTMENT

(Title Omitted)

Application for Shortening of Time for Notice of Motion and Order Thereon

Comes now Virginia Lambert, Defendant-Appellant, by Samuel C. McMorris, and applies to the Court for its order shortening the time for notice of motion for additions to record herein, and permitting the said motion to be heard on Thursday, the 5th day of January, 1956, at 9:30 A. M. in said court.

SAMUEL C. McMORRIS,
Samuel C. McMorris
Attorney for Defendant

ORDER

It is hereby ordered that Defendant's Motion for Additions to Record be heard in the above-entitled court on Thursday, the 5th day of January, 1956, at 9:30 A. M.

BISHOP
Presiding Judge

1/3/56

STIPULATION

It is hereby stipulated, by and between the attorneys for the parties hereto, the motion of defendant-appellant for

additions to record be heard in the above-entitled court on Thursday, the 5th day of January, 1956, at the hour of 9:30 o'clock a. m.

S. C. McMorris
Attorney for Defendant-Appellant

P. E. Grey
Deputy City Attorney

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30 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, APPELLATE DEPARTMENT

(Title Omitted)

Motion for Additions to Record

Comes now Virginia Lambert, Defendant-Appellant, under Rule 9, Rules on Appeal from Municipal Courts and Inferior Courts in Criminal Cases, and moves the Court to authorize the trial judge to order a Reporter's Transcript of the testimony of Defendant and the oral instructions of the trial court, and to order that such Reporter's Transcript be furnished at the expense of Los Angeles County.

/s/ Samuel C. McMorris
Samuel C. McMorris
Attorney for Defendant-Appellant

Affidavit re Motion for Additions

County of Los Angeles } ss
State of California }

Samuel C. McMorris, being first duly sworn according to law, deposes and says:

I

That defendant, on or about the 19th day of April, 1955, was found guilty of the misdemeanor charged in Case No. 33463 in the Municipal Court of the Los Angeles Judicial District, to wit: failing to register as a convicted person.

II

That on the 25th day of April, the said Municipal Court, by and through the Honorable Byron J. Walters, judge, denied defendant's motion for a new trial and placed defendant on three years summary probation upon the condition, inter alia, that defendant pay forthwith the sum of $250.00 into the Court.

III

That within the time provided by the Rules of the Judicial Council relating to appeals from inferior courts to the Superior Court, defendant duly served her notice of appeal upon plaintiff.

IV

That affiant wished to submit a Reporter's Transcript of the trial, but was informed by the office of the Court Reporter that such transcript, in Municipal Court matters, would have to be furnished at the expense of defendant; that defendant was then and is now an indigent person and was then and is now unable to pay the expenses of such a transcript; that, because of defendant's indigence as aforesaid, affiant was compelled to proceed by way of Statement on Appeal; that affiant was then, and is now, donating his services to defendant because of her inability to pay counsel fees, and as a charity matter.

V

That on the 4th day of May, 1955, defendant filed her Proposed Statement on Appeal; that on the 1st day of May, 1955, the clerk of the said Municipal Court set June 8, 1955, as the date for settling the Statement on Appeal, and mailed notices to the People and to defendant; that defendant served a copy of the said Proposed Statement upon the People prior to the filing thereof; that at no time prior to the said date did the people prepare or serve or file any proposed amendments to petitioner's Proposed Statement on Appeal, nor did the People at any time prior to the time so set by the Court for settling the said Statement, move the Court for an extension of time in which

to file amendments to the said Proposed Statement, or submit an affidavit showing good cause therefor, as required by Rule 6, Rules on Appeal from Inferior
32 Courts; that on June 8, 1955, the said Municipal Court by and through the Honorable Byron J. Walters, Judge, arbitrarily granted the People an extension of fifteen days in which to file such amendments; that thereafter on the 16th day of June, 1955, the People filed its Proposed Amendments.

VI

That on the 5th day of July, 1955, defendant, in Case No. 646331 in the Superior Court, petitioned for a writ of mandate requiring the trial court to strike from the records and files of Case No. 33463 in the Municipal Court the proposed Amendments to Defendant's Proposed Statement of Appeal so filed contrary to the Rule of Court in such cases provided; that on or about the 14th day of October, 1955, the said Superior Court denied petitioner's petition aforesaid.

VII

That on the 14th day of October, 1955, the said Municipal Court, in the absence of affiant but in presence of People's Counsel, issued its order as follows: This matter having been held pending decision of the Superior Court on a writ of mandate directed to the power of this court to grant the people time to prepare amendments to the Statement of Appeal and it appearing that such writ of mandate has recently been denied, it is therefore ordered that Respondent's proposed Amendments to the appellant's proposed Statement on Appeal, are, and each of them is, allowed. Defendant's counsel is directed to re-engross defendant's Statement on Appeal on or before October 21, 1955.

VIII

That at no time did affiant receive written notice of the last-stated order of the court; that on the 19th day of October, 1955, and not prior thereto, affiant was informed by the clerk of the trial court, that the court had issued its order as aforesaid; that on the 20th day of October, 1955, affiant, in open court in the presence of People's

counsel, moved the court for an extension of time in which to engross the said statement and to object and be heard on people's amendments; that this motion of affiant was denied; that on the 21st day of October, 1955, the engrossed statement was submitted by affiant as ordered by the trial court; that on the 28th day of November,
33 1955, files on appeal were transmitted to the Appellate Department after certification and signing of said statement by the trial court.

IX

That in the opinion of affiant the said Engrossed Statement, so certified without notice of time of settlement and without opportunity for affiant to be heard on his objections to respondent's proposed Amendments, is in error in those instances in which People's amendments were substituted for appellant's Proposed Statement, and in the additions to the statement as proposed by respondent; that important parts of defendant's proffered but excluded testimony were omitted by inadvertence in appellant's Proposed Statement; that the Appellate Department may be precluded from inquiry into possible misdirection of the jury by the trial court in view of the fact that the instructions were oral and have not been furnished in their entirety because of defendant's indigence as aforesaid.

X

That affiant has recently become apprised of 1955 Amendments to the Government Code, not in force at the time defendant submitted her Proposed Statement, which make it possible for the County to furnish a Reporter's Transcript in misdemeanor as well as in felony cases; that in view of the aforesaid facts, justice and a full and fair hearing of the issues of law herein require a Reporter's Transcript; that it is highly important for the record to be complete at this time in view of the issues raised regarding violation of the Federal Constitution, the final hearing whereof may be had before the Supreme Court of the United States; and further affiant now says not.

SAMUEL C. MCMORRIS
Samuel C. McMorris

Subscribed and sworn to before me, a notary public of the County of Los Angeles, State of California, this 3rd day of Jan. 1956.

HARRY M. CURRY
Notary Public,
Los Angeles County, Calif.

34 **Points and Authorities in Support of Motion for Additions to Record**

I

RULES ON APPEAL FROM MUNICIPAL COURTS AND INFERIOR COURTS IN CRIMINAL CASES

Rule 9. On a sufficient showing by affidavit, or otherwise, that evidence was taken or proceedings were had in the trial court or that papers are there on file which are material to a disposition of the appeal and are not included in the record on appeal, and a showing of good cause why the same have not been included in said record, the Superior Court may authorize the trial judge to make a further certificate as to such evidence or other proceedings or papers, and direct the same, when so certified, to be added to the record.

Rule 7. Upon the filing of such proposed amendments or the expiration of the time therefor without the filing thereof, the trial judge *shall* forthwith *fix a time for settlement* of the statement or transcript, or both, which time shall be as early as the business of the court will permit, either in chambers or in open court, and cause *notice thereof to be mailed*, at least five days before the time fixed *to each party*, or if any party appears by attorney, then to his attorney . . . . The trial judge shall *at the time fixed*, . . . settle the statement or transcript, or both, and the amendments proposed thereto, if any. . . . (Italics furnished)

II

The procedural rules of the courts are a part of due process of law and must be observed in the interests of orderly functioning of the administration of justice. Peo. v. Gilbert, 25 C(2d) 422, 154 P 2d 657.

Where the court or an officer thereof has knowledge re-

quiring the exercise of a duty on behalf of the accused, failure to exercise such duty constitutes a denial of due process. Robinson v. Johnston (DC Cal.) 50 F Supp 744.

III

Government Code

Sec. 72195. Government Code Sections 69942 to 69953, inclusive, and Section 273 of the Code of Civil Procedure are hereby made applicable to the qualifications, duties, official oath, certification of transcripts and fees of official reporters of municipal courts, except that the fee for reporting testimony and proceedings in contested cases, except for official reporters of municipal courts where a statute provides otherwise, is twenty-five dollars ($25) a day.

Sec. 69952. Fees of Reporters: Criminal cases: County to pay. In criminal cases in which the court specifically so directs, the fee for reporting and for a transcript ordered by the court to be made shall be paid out of the county treasury on the order of the court, except that when a daily transcript is ordered pursuant to Code of Civil Procedure Section 269 such section shall apply. In any case, the court shall not order to be transcribed and paid for out of the county treasury any matter or material except that reported by the reporter pursuant to Code of Civil Procedure Section 269.

Sec. 72604. Official reporter: Fees for services in county having population of 2,000,000 inhabitants, or over (Los Angeles County) . . . All other fees of such reporters for transcriptions shall be as provided in Sections 69947 to 69953 of the Government Code.

IV

On appeal from a criminal judgment or from the order denying a new trial, the defendant is entitled, on timely application, to have the record on appeal furnished by the state. Paiva, in re (1948) 31 C 2d 503, 190 P 2d 604. (This case, and others to follow, is included in Government Code annotations to Sec. 69952, formerly applicable to Superior Courts only, now by reference made applicable to Municipal Courts).

Enactment of Penal Code Sec. 1247 clarified the legislative intention as expressed in this statute to the effect that the defendants in criminal cases were not to bear the cost of the reporter's transcript and were entitled to it *as a matter of right* subject only to the discretion of the court in designating the portions deemed necessary to make a fair record upon appeal. Peo. v. Smith
36 (1949) 34 C 2d 449, 211 P 2d 561.

Under Rules on Appeal, rules 33(a), 35(b), defendant appealing from a judgment of conviction is entitled to the normal reporter's transcript at the expense of the state as a matter of right without any application to or order of the trial court, and cannot be required to take the pauper's oath in order to obtain it. The pre-existing requirement as to an order of court, allowing the court to limit the transcript to what it deems relevant and necessary, is continued only as to the additional transcript provided for by rule 33(b). Peo. v. Smith, 34 C 2d 449; 4 Cal. Jur. 2d, Appeal and Error 438, p. 262.

Respectfully submitted,

SAMUEL C. McMORRIS
Samuel C. McMorris
Attorney for Defendant-Appellant

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38 IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

Superior Court No. CR A 3411
Trial Court No. 33,463

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

vs.

MISS VIRGINIA LAMBERT, *Defendant and Appellant.*

Memorandum Opinion—Filed March 2, 1956

Appeal by defendant from an order and a judgment of the Municipal Court of the Los Angeles Judicial District, Byron J. Walters, Judge. Affirmed. Motion denied.

For Appellant—Samuel C. McMorris, Esq.

For Respondent—Roger Arnebergh, City Attorney; Donald M. Redwine, Assistant City Attorney; Philip E. Grey, Deputy City Attorney.

The defendant was convicted of violating subdivision (a) of section 52.39 of the Municipal Code of the City of Los Angeles, failing to register with the police after being convicted of a felony. She appeals from the order denying a new trial and attempts to appeal from the judgment although there is no judgment. However, she could have appealed from the order granting probation, and we shall consider this as such an appeal.

It is undisputed (1) that defendant, on May 29, 1951
and on June 18, 1951, was convicted of two felonies,
39 each a violation of Penal Code 470; that she was
sentenced to prison on each charge; that execution of the sentence was suspended; and that she was granted probation on condition that she serve time in the county jail; (2) that prior to February 2, 1955 (the date charged in the complaint) neither of said convictions had been set aside; (3) that on February 2, 1955 she resided in Los Angeles and had resided there "for a seven and one half year uninterrupted period," and (4) that she had not registered with the police prior to her arrest. In other words, every element of the crime charged was proved without dispute. There is no merit to the defense that she did not know she had been convicted of felonies and that she did not know she had to register with the police of the City of Los Angeles as a convicted felon. There is no merit to the claim that the ordinance is unconstitutional. Nothing has been suggested to show how anything in a reporter's transcript could result in a reversal.

The order denying a new trial and the order granting probation are affirmed. Appellant's motion for additions to the record is denied.

Judge

Dated March 2, 1956.

We concur:

BISHOP
Presiding Judge

PATERSON
Judge

40 IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent

vs.

MISS VIRGINIA LAMBERT, *Defendant and Appellant.*

Judgment—March 2, 1956

This cause having been argued and submitted and fully considered, judgment is ordered as follows:

It is ORDERED and ADJUDGED that the order denying a new trial and the order granting probation made and entered in the Municipal Court of the Los Angeles Judicial District, County of Los Angeles, State of California, in the above entitled cause be and the same are hereby affirmed. Appellant's motion for additions to the record is denied.

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41 IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

(Title Omitted)

Notice of Appeal to the Supreme Court of the United States Filed April 13, 1956

I

Notice is hereby given that Miss Virginia Lambert, the appellant above-named, hereby appeals to the Supreme Court of the United States from the final order of the above-entitled court affirming the judgment of conviction herein and entered on the 2d day of March, 1956.

This appeal is taken pursuant to 28 U. S. C. Sec. 1257(2).

Appellant was convicted of the crime of failing to register with the police after being convicted of a felony, in violation of Section 52.39 of the Municipal Code of the City of Los Angeles; was placed on three-years summary probation on condition that she pay a fine of $250.00; and is presently enlarged on bail in the sum of $500.00.

II

The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

(a) The judgment roll;

(b) A reporter's transcript of the testimony on the trial herein.

III

The following questions are presented by this appeal:

42 (1) Whether the ordinance herein involved is in violation of the Constitution of the United States;
(2) Whether due process or equal protection was denied appellant upon her arrest and trial;
(3) Whether the conviction herein was obtained as the result of an unreasonable search and seizure and arrest, in violation of the Federal Constitution.

SAMUEL MCMORRIS
Samuel McMorris
Attorney for Appellant

Service of Notice of Appeal (omitted in printing).

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44 **Precipe for Record**

(omitted in Printing)

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46 Clerk's Certificate to foregoing transcript omitted in printing.

47 SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 213 Misc.

(Title Omitted)

Order Granting Motion for Leave to Proceed in Former Pauperis—Filed November 19, 1956

ON CONSIDERATION of the motion for leave to proceed *in forma pauperis* in this case,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

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48 SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 213 Misc.

(Title Omitted)

Order Noting Probable Jurisdiction—Filed November 19, 1956

APPEAL from the Appellate Department of the Superior Court of the State of California, Los Angeles County.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the appellate docket as No. 590.

LIBRARY
SUPREME COURT, U.S.

Supreme Court, U.S.
FILED
FEB 28 1957
JOHN T. FEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. ~~390~~ 47

VIRGINIA LAMBERT,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

APPELLANT'S OPENING BRIEF

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
IN AND FOR THE COUNTY OF LOS ANGELES

SAMUEL C. McMORRIS,
2815 South Western Avenue,
Los Angeles 18, California,
Telephone: REpublic 2-2326,
Counsel for Appellant.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 590

VIRGINIA LAMBERT,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee

APPELLANT'S OPENING BRIEF

I. Reference to Official Reports

Appellant hereby appeals to the Supreme Court of the United States from the final order of the Superior Court of the State of California, in and for the County of Los Angeles Appellate Department, affirming the judgment of conviction of appellant of the crime of failing to register with the police department after being convicted of a felony, in violation of Section 52.39 of the Municipal Code of the City of Los Angeles. The judgment of the Municipal Court was entered on the 25th day of April, 1955, and is unreported. The judgment of the Appellate Department of the Superior Court was entered on the 2d day of March, 1956, and is unreported, but the text thereof may be found on pages 29 through 31 of the Transcript of Record herein.

II. Jurisdictional Grounds

The grounds on which the jurisdiction of this Court is invoked, set forth fully in appellant's Jurisdictional Statement on Appeal, heretofore furnished, is that Section 52.39 of the Los Angeles Municipal Code, to be set forth fully in the Appendix hereto, and fully set forth in the Complaint, on pages 8 and 9 of the Transcript of Record, is unconstitutional, in that it is a denial of appellant's rights to due process and equal protection guaranteed by the 14th Amendment of the United States Constitution.

This appeal is taken pursuant to 28 U. S. C. 1257 (2), which is as follows:

1257. Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(2) By appeal, where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

The judgment of the Appellate Department of the Superior Court was entered on the 2d day of March, 1956; appellant filed her notice of appeal in the said court on the 13th day of April, 1956; Order Noting Probable Jurisdiction was filed in this Court on November 19, 1956.

III. Provisions of Law Involved

In addition to the 14th Amendment to the United States Constitution and Section 52.39 of the Los Angeles Municipal Code, the following California statutes, to be set forth in full in the Appendix, are pertinent:

California Penal Code Sections 20, 290, 644, 647.5, 841, and 1203.4; California Government Code Secs. 72195, 29952

and 72604; Rules 7 and 9, Rules on Appeal from Municipal Courts and Inferior Courts in Criminal Cases.

IV. Questions Presented for Review

Appellant contends that she was denied her rights to due process and equal protection under the 14th Amendment of the United States Constitution in the following particulars, to wit:

(1) Self-incrimination is required by the ordinance under which conviction was had, in derogation of her rights under the said Amendment and Under Article I, Section 19 of the Constitution of the State of California.

(2) The security of appellant's privacy against arbitrary intrusion by the police is violated by the said ordinance.

(3) Due process and equal protection were denied by her unlawful arrest.

(4) Due process and equal protection were denied because of the bias and prejudice of the trial judge.

(5) The ordinance of whose violation appellant was convicted is too vague, indefinite, and uncertain to constitute valid criminal legislation.

(6) The complaint filed against appellant does not state a cause of action.

(7) Evidence resulting from unlawful arrest was introduced against appellant.

(8) The trial court excluded relevant facts which were proffered by appellant and which would tend to show the illegality of appellant's arrest, and thereby denied appellant equal benefit of settled principles of law.

(9) The requirement of *mens rea*, or wilful misconduct, was improperly abolished by the ordinance and by judicial interpretation thereof.

(10) Appellant was denied equal benefit of the rules of court as follows:

(a) Trial court's instructions were contrary to law.

(b) Reporter's transcript of trial testimony was not furnished appellant at expense of the people.

(c) Trial court allowed people's requests for instructions filed contrary to court rule.

(d) Trial court settled statement on appeal in a manner contrary to law.

(e) Appellate court failed to allow writ of mandate to compel trial court to proceed according to law and to furnish reporter's transcript.

(f) Trial court's judgment was an abuse of discretion and based on bias and prejudice.

(g) At the time of her arrest, appellant was only very technically in violation of the ordinance, and that because her trial court had imposed an illegal judgment and sentence upon her.

V. The Facts

The facts of this case, stated in the Engrossed Statement on Appeal on pages 15 through 21 of the Transcript of Record, may be summarized, with appropriate page references, as follows:

The facts of this case began on May 29, 1951, and June 18, 1951, on which dates appellant was convicted of the crime of forgery, in two counts (p. 16; ll. 17 through 25, T. R.). Appellant was given probation. Subsequently, in May, 1952, the probation order was modified to provide that appellant should spend the next six months in the county jail and that thereupon her probation would expire without dismissal.

On the second day of February, 1955, appellant, while in the company of her attorney-employer, was accosted on a street corner by two police officers (p. 19, ll. 28, through

p. 20, l. 12, T. R.), who, according to proffered but excluded testimony, without informing her of the reason of their arrest or detention of her, began a search of her person and effects, apparently for narcotics, by rolling up the sleeves of her coat and inspecting her veins and rummaging through her purse. When she protested this conduct, she was handcuffed and roughly shoved into the rear of the prowl car driven by the arresting officers; her attorney inquired of the arresting officers what the trouble was in an attempt to discuss the matter with them, but the officers ignored him. Appellant was then taken to the police station and there interrogated for two hours in an offensive and insulting manner, and disrobed and further searched about her person, all without being told the reason for her arrest. While she was thus detained, her attorney requested permission to talk to her, but such permission was refused by the lieutenant in charge. After their investigation and interrogation failed to reveal any evidence of present criminal activity, she was booked on a charge of failure to register as an ex-convict. That was the first time that she had been informed of any charge upon which she was being held, and no effort was made to permit her to register in lieu of being further held by the police.

On the 17th day of February, 1955, counsel for appellant filed a demurrer based on all constitutional grounds hereinabove specified. Cause was continued (R. 2, l. 6) to 3-3-55 for hearing on demurrer, at which time appellant's counsel orally and in a written brief argued that the ordinance involved was unconstitutional and called the court's attention to the facts of the arrest as hereinabove specified. The court overruled the demurrer and set trial for April 14, 1955.

After the impanelling of the jury on the last-mentioned date, the court discovered an error in the date of the alleged offense in that the year 1954 was designated, instead

of the year 1955, whereupon the court called counsel to the bench and ordered that the complaint be amended to designate the correct year (R. 16, ll. 4 through 10).

The People offered in evidence certified copies of the judgments of conviction of defendant-appellant in the cases specified in the complaint (R. 8), and a certified copy of the court order purporting to modify the probation order of defendant-appellant, as aforesaid.

Defendant objected to the offer of this or any further evidence by plaintiff on the ground that the complaint failed to state a cause of action in that Sec. 52.39 of the Municipal Code is unconstitutional as regards both the State and Federal constitutions, for the following reasons: denial of equal protection; denial of due process; conflict with general law; self-incrimination; additional punishment; cruel and unusual punishment; police abuse of the ordinance in this case; unreasonable exercise of police power; unreasonable search and seizure.

The court denied the objections of defendant as to the claim of unconstitutionality. The court held, however, that the complaint did not state a cause of action in that it failed to negative the exceptions specified in Subs. (f) of 52.39, to wit: that it did not appear from the complaint that the conviction of defendant of the designated felonies had not been set aside in a manner provided by law. The court of its own motion ordered that the complaint be amended to negative the said exceptions (R. 16, l. 36 to R. 17, l. 10).

After the said amendment, the exhibits previously offered by plaintiff were introduced in evidence over defendant's objections on the same constitutional grounds. Defendant then stipulated that she had resided in the City of Los Angeles for a seven-and-one-half-year uninterrupted period, that up to the time of her arrest her conviction had not been set aside in a manner provided by law, and that

she had not registered with the police department. Thereupon plaintiff rested its case.

Defendant took the stand (R. 17, l. 33) and offered to prove that she did not know that she had a duty to register at or before the time of her arrest. The court sustained objections to this testimony. Defendant then testified that she had no knowledge that the crime of which she had been convicted was punishable as a felony, that she fainted at the time of the pronouncement of her sentence, that she was throughout the proceedings which led to her conviction on two counts of forgery in a confused mental state and did not fully understand the nature of the proceedings, that she did not understand the difference between a crime punishable as felony and other crimes, but that she thought that, unless a person was confined in a state institution that the crime involved was not punishable as a felony, whereas the only institution in which she had been confined was the county jail as a result of her conviction, and that she had not been informed by her former attorneys, by the probation officer, or any other person that the crime she had been convicted of was punishable as a felony.

Defense rested, and the court charged the jury orally, *inter alia*, (R. 18, ll. 30 through 38), that defendant was guilty as charged if she knew, at the time of her failure to register with the Chief of Police, that she had been found "guilty of a crime punishable as felony," that forgery is a crime punishable as a felony, and that ignorance of the law requiring registration is no excuse. The jury retired and returned a verdict of "Guilty as charged."

Whereupon defendant moved the Court for a dismissal in the interest of justice on the grounds that (1) no evidence, or insufficient evidence, at least, had been introduced by the prosecution to sustain the charge in view of the circumstantial evidence rule that, where there are two possible reasonable theories, one pointing to guilt, the other

to innocence, the defendant must be found not guilt; (2) that the defendant is only very technically in violation of the ordinance involved in view of her right under Penal Code Section 1203.4 to have her conviction set aside, which right she subsequently exercised so that she comes within the exception specified in Section 52.39 (f) of the Municipal Code; and (3) that in this case a conviction would not serve the purpose of vindicating the will of the State but would instead be a vindication of the will of two police officers who had made a false arrest and were using the ordinance in an effort to justify that arrest, as an afterthought.

The Court denied the said motion. Defendant moved for arrest of judgment on the ground that the ordinance alleged to have been violated is contrary to the letter and spirit of the Federal and State Constitutions for the reasons hereinabove specified, and upon the further ground that, even if it should be conceded that the ordinance is valid on its face, that its misuse in a specific case or series of cases, including the one at bar, would render it unconstitutional in this specific instance. Defendant again offered to testify regarding the facts of her arrest, but the court again denied this proffer of proof, and denied defendant's motion to arrest judgment.

Defendant then moved for a new trial on the grounds that (1) the verdict was contrary to law and evidence, and (2) the Court misdirected the jury in matters of law and erred in the decision of questions of law arising during the course of the trial.

Defendant's motion was denied. The Court suspended the imposition of sentence and placed defendant on three years' summary probation on condition that she violate no law dealing with public health, welfare, or morals, and in particular Section 52.39 of the Municipal Code and on the

further condition that defendant pay forthwith to the Clerk of the Municipal Court the sum of $250.00.

On April 29, 1955, defendant filed her notice of appeal from the judgment of the trial court and on the 4th day of May, 1955, filed her Proposed Statement on Appeal; on the 31st day of May, 1955, the Clerk of the said Municipal Court set June 8, 1955, as the date for settling the Statement on Appeal, and (R. 6) mailed notices to the People and to defendant. At no time prior to the said date did the People prepare or serve or file any proposed amendments to petitioner's Proposed Statement on Appeal (R. 24), nor did the People at any time prior to the time set by the Court for settling the said Statement, move the Court for an extension of time in which to file amendments to the said proposed Statement, or submit an affidavit showing good cause therefor, as required by Rule 6, Rules on Appeal from Inferior Courts to the Appellate Department of the Superior Court. On June 8, 1955, after the parties appeared for settlement, the Court arbitrarily, and in contravention of the rules of court in such cases made and provided, granted the People an extension of fifteen days in which to file its Proposed Amendments.

On the 5th day of July, 1955, defendant petitioned the Superior Court for a writ of mandate, requiring the trial court to strike from the records and files the Proposed Amendments theretofore filed on the 16th day of June, but the Appellate Department of the Superior Court denied the said petition.

On the 14th day of October, 1955, the trial court, in the absence of defendant, issued its order allowing all and several the Proposed Amendments to the Statement on Appeal, and ordering defendant to engross the Statement on Appeal in accordance therewith.

At no time did affiant receive written notice of the last-stated order of the Court. On the 19th day of October,

1955 (R. 25, l. 39), and not prior thereto, affiant was informed by the clerk of the trial court, in a telephone conversation, that the court had issued its order as aforesaid; that on the 20th day of October, 1955, appellant, in open court in the presence of People's counsel, moved the court for an extension of time in which to engross the said statement and to object and be heard on People's amendments. This motion of affiant was denied. The Statement was engrossed as ordered, and the case submitted to the Appellate Department (R. 26).

On the 5th day of January, 1956, the date set for oral argument in the Appellate Department, appellant moved the Court to authorize the trial judge to order a Reporter's Transcript of the testimony of Defendant and the oral instructions of the trial court, in view of the arbitrary manner of the trial court in its settling of the said Statement on Appeal; and in further view of the fact, supplied by affidavit (See p. 24, T. R.), that appellant was and is an indigent person, and unable to pay the costs of such reporter's transcript. Defendant also pointed out that she had inadvertently omitted from her proposed statement important parts of appellant's proffered by excluded testimony (R. 26), and indicated that appellant now wished to take advantage of a 1955 Amendment to the Government Code of the State of California (Secs. 72195 thereof, for the text of which, see R. 28), permitting appeal in *forma pauperis* in misdemeanor matters (it had formerly been the rule in felony matters only). The Appellate Department denied this motion of appellant and, in its opinion to be set forth *verbatim* in the appendix hereof, sustained the trial court's judgment of conviction.

Upon *remittitur* to the trial court, appellant, by her counsel, submitted affidavits, dated April 9, 1956, and signed by a duly licensed physician of the State of California, indicating that appellant was in the fourth month of preg-

nancy; that she was in an extremely weak physical condition, because of anemia and other complications; that pregnancy would not have been advised until after an improvement in her condition; that because of these facts, and the fact that she was also emotionally upset about her condition and other personal affairs, prolonged rest and medication had been prescribed for her; that worries attendant upon a court appearance or similar legal matters might be dangerous for her or for her unborn child. Appellant moved the Court for a modification of probation, explaining also that she was indigent and could not pay the fine to the Court at that time. The Court gave her "twenty-four hours" to pay the fine or go to jail, explaining his action with the statement that appellant, by her trial and appeal, had cost the People a lot of money.

VI. Summary of Argument

The points to be hereinafter made fall logically under three heads: (A) That any criminal registration law in unconstitutional in that it requires self-incrimination, is an unreasonable exercise of police power, permits cruel and unusual punishment, encourages unlawful arrest and search, and is a denial of equal protection and due process.

(B) That the specific ordinance herein involved is unconstitutional in that it requires self-incrimination, inflicts cruel and unusual punishment, is an unreasonable exercise of police power, encourages unlawful arrest and search, is a denial of equal protection and due process, *inter alia*, in that it imposes penal sanctions in the absence of *mens rea*, and is too vague, indefinite, and uncertain to constitute valid criminal legislation.

(C) The application of the ordinance in this specific instance, and the entire criminal proceedings from the date of the order terminating her probation until the appellate

court's refusal to furnish *verbatim* record of the trial, constitute a denial of due process and equal protection.

VII

ARGUMENT

Introduction

The ordinance herein involved is contrary to the 14th Amendment to the United States Constitution and to principles relative to the said Constitution as expressed in decisions of the Supreme Court of the United States, and the procedure of the trial and appellate courts, the arresting officers, and the court which terminated appellant's probation for the felony of which she had been previously convicted, as well as the decision of the Appellate Department, as appended hereto, are not in accordance with the said constitutional principles. Specifically, the said ordinance and the proceedings pertinent hereto, constitute a denial of equal protection and of due process of law, cruel and unusual punishment; forced self-incrimination; unreasonable exercise of police power; the ordinance is too vague to constitute valid criminal legislation, permits and encourages unreasonable search and seizure, and, in the instant case, served as a vehicle for police abuse.

Counsel has made the most extensive research of this problem, as a result of which the following conclusions, which will be substantiated with citations hereinbelow, have been formulated: Although this ordinance has been in existence since 1933, twenty-four years ago, when Los Angeles City Council led the way, only a total of 47 municipalities have to date adopted similar ordinances. A grand total of five States, including California, have passed Criminal Registration Laws. In the only textual treatments of this problem that were discovered by counsel,

the conclusion was reached that these ordinances are invalid. See *Criminal Registration Law*, 27 Jour. Crim. L. & Criminology 295, 296 (1936) and Current Note: Criminal Registration Ordinances: Police Control over Potential Recidivists, University of Pennsylvania Law Review, Vol. 103, No. 1, October, 1954, which we will hereinafter refer to as the Note. Federal and State Constitution provisions principally involved are these:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. Amendment 14, United States Constitution.

In criminal prosecutions, in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf, and to appear and defend, in person and with counsel. No person shall be twice put in jeopardy for the same offense; nor be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property without due process of law; but in any criminal case, etc. (not applicable here). Sec. 13 of Article I, California Constitution.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable seizures and searches, shall not be violated; and no warrant shall issue, but on probaable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized. Art. I, Sec. 19, Calif. Const.

Self-Incrimination

The words, "No person . . . shall be compelled, in any criminal case, to be a witness against himself" means that no person shall be compelled to make any statement, orally or in writing, anywhere or at any time, which may be *made use of* (emphasis here and elsewhere supplied) against him in any criminal prosecution, then pending or which might thereafter be brought against him. The protection afforded includes but goes beyond the assurance to a defendant on trial in a criminal case that he will not be compelled to testify against himself. The protection intended applies even before the commencement of a criminal case and secures one who may reasonably be expected to be a defendant from furnishing ammunition to be used against him. *Peo* v. *McCormick* (1951), 102 C. A. (2d) Supp. 954, 228 P. (2d) 349.

In the *McCormick* case, *supra*, each defendant was charged with having failed to register as a member of a communist organization. This case, in the Appellate Department involved in the instant case, should have been determinative of the present problem. We can think of no closer analogy than that which exists between the two ordinances involved. Although convicted persons do not compose a close-knit or organized unit, as does a communist organization, the language is nevertheless applicable. In each case registration is sought as a means of facilitating the prosecution of a *class* of persons expected by the police to become involved in criminal activity. In each case, the furnishing of the whereabouts and affiliations of the registrant gives ammunition which may be used in such prosecution.

The revelation of communist affiliation under the one ordinance is no different from the revelation of all past convictions by the convict, in view of Penal Code Sec. 644,

the Habitual Criminal Statute of California; for by the supplying of such information law enforcement agencies are given leads, records, and admissions, upon which prosecution under the cited statute may be based, and very commonly is based. It is one thing for law-enforcement agencies to obtain by their own investigation, evidence of habitual criminality, utilizing F. B. I. records or other reports in their efforts. It is quite another to require a potential defendant to assist them by enforced revelation of the facts upon which such a prosecution may be based.

The furnishing of the registrant's address, along, with continuance subjection of the registrant to police surveillance, is such facilitation of possible future prosecution, as to be contrary to the principle against self-incrimination. A *fortiori*, this is true in view of the Habitual Criminal Statute, which makes habitual criminality a substantive offense, while Sec. 52.39 of the Municipal Code requires a full disclosure of habitual criminality, facilitating proof thereof and supplying admissions of the defendant relative thereto.

While it has been held that due process of law does not necessarily include the privilege against self-incrimination, when such privilege is provided for by a State, it must be uniformly applied, and discrimination in that regard constitutes a denial of due process, or equal protection. This principle is implicit in the statement that equal protection of the laws includes the right to be tried in the same manner as others accused of crime are tried. *Bailey* v. *Alabama*, 31 S. Ct. 145, 219 U. S. 219, 55 L. Ed. 191.

Unreasonable Exercise of Police Power

It is established beyond question that every State power, including the police power, is limited by the inhibition of the 14th Amendment. *Sou. Ry. Co.* v. *Virginia*, 290 U. S. 190, 78 L. Ed. 260, 54 S. Ct. 148.

The 14th Amendment requires that governmental regulation shall be accomplished by methods consistent with due process; the due process clause is a limitation upon an improper exercise of the police power of the States in that it prevents an arbitrary or unreasonable exercise of the power through laws or regulations. *Nebbia* v. *New York*, 291 U. S. 502, 78 L. Ed. 940, 54 S. Ct. 505, 89 A. L. R. 1469; *Grenada Lumber Co.* v. *Miss.*, 217 U. S. 433, 54 L. Ed. 826, 30j S. Ct. 535; *Maxwell* v. *Miami*, 87 Fla. 107, 100 So. 147, 33 A. L. R. 682; *Dobbins* v. *Los Angeles*, 195 U. S. 223, 49 L. Ed. 169, 25 S. Ct. 18.

The police power extends only to such measures as are reasonable; police regulations must be reasonable under all circumstances. *Lochner* v. *New York*, 198 U. S. 45, 49 L. Ed. 937, 25 S. Ct. 539, 3 Ann. Cas. 1133; *Missouri & N. A. R. Co.* v. *State*, 92 Ark. 1, 121 S. W. 1930, 31 L. R. A. (N. S.) 861, 135 Am. St. Rep. 164; *Miller* v. *Board of Public Works*, 195 Cal. 477, 234 P. 381, 38 A. L. R. 1479; *Ex parte Quarz*, 149 C. 79, 84 P. 766, 5 L. R. A. (N. S.) 183; 117 Am. St. Rep. 115, 9 Ann. Cas. 747; *Laurel Hill Cemetery* v. *San Francisco*, 152 C. 464, 93 P. 70, 14 Ann. Cas. 1080, 27 L. R. A. (N. S.) 260, aff'd in 216 U. S. 358, 54 L. Ed. 515, 30 S. Ct. 301.

It is a general rule that in order for a police measure to be reasonable, the means adopted must be reasonably necessary and appropriate for the accomplishment of the legitimate objects falling within the scope of the power. *Buchanan* v. *Warley*, 245 U. S. 60, 92 L. Ed. 149, 32 S. Ct. 16, L. R. A. 1918, C. 210, Ann. Cas. 1918 A. 1201; *Miller* v. *Board of Public Works*, 195 Cal. 477, 234 P. 381, 38 A. L. R. 1478, writ of error dismissed in 273 U. S. 781, 77 L. Ed. 889, 47 S. Ct. 460.

Although the ends sought to be achieved by certain legislative enactments are within the police power, the methods and procedures provided may be constitutionally objec-

tionable as unreasonable, arbitrary, or oppressive, and not really designed to accomplish the expressed purpose of the act. *State* v. *Dexter,* 32 Wash. (2d) 551, 202 P. (2d) 906, 13 A. L. R. (2d) 1081, aff'd 338 U. S. 863, 94 L. Ed. 529, 70 S. Ct. 147.

A regulation which ostensibly seeks the protection of the public safety but which factually runs counter to the common experience of mankind is unreasonable. *Lakewood Exp. Service* v. *Pub. Utility Comr's,* 1 N. J. 45, 61 A. (2d) 730, 7 A. L. R. (2d) 1259. See also *Abbey Land & Improvement Co.* v. *San Mateo County,* 167 C. 434, 139 P. 1068; *Ex parte Drexel,* 147 C. 763, 82 P. 429.

That the present ordinance is unreasonable is clearly demonstrated by comparing it with Penal Code Section 290 (set forth in full in Appendix), which requires that persons who are to be registered as ex-felons must be informed of this duty in writing at the time of their release from official custody. Under the local ordinance herein involved, no such prior notice is required, and since the "crime" involved is not *malum in se* and the intended violators have no means of notice in the due or ordinary course of affairs of the fact that they are in violation of a relatively obscure provision of the municipal code, the enforcement of this ordinance becomes unreasonable, oppressive, and a vehicle of police abuse. It is suggested that this particular defect might be mitigated by the requirement that, before a person be charged with this offense, he first be given the alternative of registering, if indeed the purpose of the ordinance is to require registration rather than put ignorant offenders in jail for a technical and unwitting violation of law. The suggested amendment would prevent the police from selective harassment of individuals who offend them or whom they for reasons of their own, and not the will of the people, single out for

discrimination. Support for this position is lent by the holding that duty exists to inform offender of conditions of probation. *U. S.* v. *Follette*, 32 F. Supp. 953; *Whitehead* v. *U. S.*, 155 F. 2d 460, 329 U. S. 747; *Peo* v. *Frank*, 211 P. (2d) 350, 94 C. A. (2d) 740.

The ordinance is further unreasonable in that it requires a person, after one conviction, when there is not indication of a tendency to recidivism, and when the crime involved is not, according to statistical, scientific, and sociological knowledge, inherently recidivistic, to submit to police surveillance *for the rest of his natural life.* This is so contrary to our basic American concepts of justice and fair play, individual dignity and liberty, and to the due process principle that a man is presumed innocent and law-abiding, as to offend the sense of humanity and decency. The restrictions, the humiliation, the constant reminder of a long past offense for which a penalty has been exacted by society, and the available police abuse permitted by this ordinance are entirely out of proportion to any avowed and valid purpose of police regulation.

It is submitted that the only probable result of having an ordinance such as this one on the books is to serve the purpose of police officers in selective harassment or an attempt to cover up a false arrest and imprisonment. The ordinance does not prevent crime, nor aid substantially, if at all, in the detection of criminals. Almost no one knows of the existence of the ordinance at all. Those who do, and who are also inclined toward crime, will in most cases not comply with the requirement since they know as a practical matter that it will not come into play until they have been arrested for some subsequent offense and that at that time failure to register will not usually aggravate their punishment. On the other hand, by not registering, they will lessen somewhat the possibility of detection by the police, who at least will not be enabled

to haul them in for questioning whenever a crime in the category it is felt they might commit, is perpetrated. Those who know of the ordinance and who want to be law-abiding and forget their past criminal record will register. Thus, in addition to being an infringement of personal privacy and dignity, the ordinance serves no valid purpose of police regulation, particularly in view of modern means of crime detection which render unnecessary such a measure as this one.

The balance between police powers and due process is more or less in a state of unstable equilibrium, changing with sociological and economic development. *State* v. *Mason*, 94 Utah 501, 78 P. (2d) 920, 117 A. L. R. 330.

Cruel and Unusual Punishment

The prohibition against cruel and unusual punishment has been held violated by a statute providing, *inter alia*, that the convicted person should be *subject to police surveillance for life*. *Weems* v. *United States*, 217 U. S. 349, 30 S. Ct. 544, 19 Ann. Cas. 705; and see 35 L. R. A. 564.

Unlawful Arrest and Search

The view has been taken that any arrest or imprisonment, except as allowed or required by law, is a denial of due process. *McBeath* v. *Campbell*, 12 S. W. (2d) 118; *Gregg* v. *Bank*, 125 S. W. (2d) 319.

Search of the person is unlawful when the purpose of the search is to discover grounds, as yet unknown, for arrest or accusation. *Bruce* v. *Sibeck*, 25 C. A. (2d) 691, 78 P. (2d) 741.

The person making the arrest must inform the person to be arrested . . . of the cause of his arrest. California Penal Code, Sec. 841.

A peace officer may make an arrest . . . without a warrant,

1. For a public offense committed or attempted in his presence.

2. When a person arrested has committed a felony, although not in his presence.

3. When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it.

4. On a charge made, upon a reasonable cause, of the commission of a felony by the party arrested.

5. At night, when there is reasonable cause to believe that he has committed a felony. Section 836, Penal Code of Calif.

The guarantee of the 4th Amendment applies to the states through the 14th Amendment. *Wolf* v. *Colorado*, 338 U. S. 25.

Evidence obtained in violation of Constitutional guarantees is inadmissible. *Peo* v. *Cahan*, 44 (2d) 434; 282 P. (2d) 905.

The Fourth and Fifth Amendments, per the 14th, bar the use of evidence obtained through an unreasonable search and seizure. *Gouled* v. *U. S.*, 255 U. S. 298; *Amos* v. *U. S.*, 255 U. S. 313; *Weeks* v. *U. S.*, 232 U. S. 383.

The security of one's privacy against arbitrary intrusion by the police—which is at the core of the 4th Amendment—is basic to a free society. It is therefore implicit in the concept of ordered liberty. *Palko* v. *Connecticut*, 302 U. S. 319, 58 S. Ct. 149, 82 L. Ed. 288.

An arrest must be made in pursuance of some method warranted by the established principles of law in the jurisdiction where it is made. *Hutchins* v. *Edson*, 1 N. H. 139; *Mayo* v. *Wilson*, 1 N. H. 53.

Under the rationale and principle of California's *Cahan*

Case, *supra*, to prevent lawless enforcement of the law, it should be held that the court does not acquire jurisdiction of the person by an arrest contrary to law, or in contravention of due process. See *Hutchins* v. *State*, 119 So. 250, 22 Ala. App. 646.

The due process clause of the Constitution of the United States avouches the right to be free of arrest save on probable cause. *Dye* v. *Cox*, 125 F. Supp. 714; *Int'l Union* v. *Copper Co.*, 31 F. Supp. 1015; and assures the right to be at liberty and to be imprisoned only for cause. *Catlette* v. *U. S.*, 132 F. 2d 902; *Dye* v. *Cox*, 125 F. Supp. 714.

Equal Protection

That the ordinance infringes the Federal and State requirements of reasonable classification is shown *supra* under the heading Unreasonable Use of Police Power. Furthermore, to lump together in a single classification for the purpose of registration persons convicted of offenses not inherently recidivistic or convicted on only one occasion, with recurrent or recidivistic criminals, constitutes improper classification, even if it should be held that recidivistic criminals might validly be required to register.

Even if a law is not discriminatory upon its face, if the evidence of practices under that law indicates a history of discriminatory application, the law violates equal protection. *Yick Wo* v. *Hopkins*, 118 U. S. 356; *Norris* v. *Alabama*, 294 U. S. 587; *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282.

That the ordinance here involved has been given a discriminatory application by the police is so much a matter of common knowledge as to be subject to judicial notice. The facts of this police discrimination are ably annotated in the University of Pennsylvania Note, in the text and

notes thereof at and following note 220 thereof. The writers conclude from their analysis of the facts and law that the stated objective of the ordinance (to aid in crime prevention and detection) is a thinly disguised excuse for a species of police brutality consisting of mass arrests, arrests without sufficient cause, and selective harassment of individuals who incur police displeasure. Even though such abuse may not have been intended by the framers of the measure, that such has been the result renders the law unconstitutional in operation. The attitude and practices of enforcement officials in Los Angeles is specifically supplied by the Note in note 17 thereof as follows:

"The immediate objectives of these ordinances appeared to be the incarceration or expulsion of undesirables, rather than the registration of criminals. Referring to the adoption of the Los Angeles, California, ordinance, it was reported that District Attorney Buron Fitts and Robert P. Stewart, chief deputy district attorney, who framed the ordinance, and Chief of Police James Davis, one of its chief supporters, declare, however, that the very fact that dangerous ex-convicts will not register is the strength of the law.

"'In the past,' says Chief Davis, 'After every major crime we have picked up many suspects with criminal records. In some of these cases we have been sure that we had in custody the guilty men, but we often lacked legal proof to convict. Under the new registration laws, each of these men can now be dealt with, not for the crime suspected, but for failing to register.'"

That the situation in Los Angeles is one in which the ordinance serves as a trap for the unwary is shown by Appendix C of the said Note, in which it is indicated that only one in ten ex-convicts in Los Angeles area has registered with the Police Department. That, in the case at bar, the ordinance was used, not to vindicate the will of

the state, but in an effort to cover up a false arrest and imprisonment and deprivation of the legal and constitutional rights of the defendant, is shown by the proffered testimony of defendant outlined hereinabove.

Equal protection of the laws includes the right to be tried in the same manner as others accused of crime are tried. *Lynch* v. *United States*, 189 F. (2d) 476.

Equal protection of the laws may be violated by consistent discrimination in the enforcement of a criminal statute. *Peo* v. *Friedman*, 96 N. E. (2d) 184, 302 N. Y. 75.

As applied, a statute may be an arbitrary and unreasonable exercise of the police power of the State, unwarrantably infringing the liberty of accused in violation of the due process clause of 14th Amendment. *Fiske* v. *Kansas*, 47 S. Ct. 655, 274, U. S., 380, 71 L. Ed. 1008.

Any major change invalidates an indictment and deprives the Court of the power to try an accused on it. *Heald* v. *United States*, 177 F. (2d) 781. The legislature may not authorize an amendment during trial in a matter of substance so as to prejudice accused. *Sutton* v. *State*, 188 S. E. 60, 54 Ga. App. 349.

In two instances, as appears on the face of the facts stated in the Engrossed Statement, the trial court, of its own motion, amended the complaint herein, thereby subjecting defendant to double jeopardy and denying due process.

Equal protection of the laws entitles one accused of crime to protection from injury by the officers having him in custody. *Lynch* v. *United Staies*, 189 F. (2d) 476. In the instant case, the facts show flagrant violation of the most fundamental rights of appellant by the arresting officers.

Prejudice and bias on the part of the trial judge may constitute a denial of equal protection of the laws. *Osborne* v. *Purdome*, 250 S. W. (2d) 159 (Mo.). In the in-

stant case, every statement and act of the trial judge reported herewith showed such an inclination to assist the prosecution and arbitrarily disregard rules of court favoring defendant as to clearly reveal such a state of bias and prejudice as to make a fair trial impossible.

A discriminatory denial of the right to appeal is a violation of the equal protection clause. *State* v. *Janiec*, 8 A. (2d) 94, 6 N. J. 608, cert. denied 71 S. C. 1007, 341 U. S. 955, 95 L. Ed. 1376.

No distinction can be taken between the Government as prosecutor and the Government as judge. If the existing code does not permit district attorneys to have a hand in such dirty business, it does not permit the judge to allow such iniquities to succeed. Holmes, J., dissenting in *Olmstead* v. *United States*, 277 U. S. 438, 470, 48 S. Ct. 564, 72 L. Ed. 944, 66 A. L. R. 376.

Due Process

(In General)

As applied to a criminal trial, denial of due process is the failure to observe that fundamental fairness essential to the very concept of justice. *Lisenba* v. *California*, 314 U. S. 219, 86 L. Ed. 166, 62 S. Ct. 280.

State methods of dealing with persons charged with crime offend the constitutional requirement of due process where they may fairly be deemed to be in conflict with deeply rooted feelings of the community. Frankfurter, J., in *Haley* v. *Ohio*, 332 U. S. 596, 92 L. Ed. 224, 68 S. Ct. 302.

Denial of due process may result from the introduction of evidence which was inadmissible because it was obtained in violation of constitutional rights. *Brooks* v. *State*, 209 Miss. 150, 46 So. (2d) 94.

Due process of law precludes defining, and thereby confining the standards required of states in their criminal

prosecutions more precisely than to say that prosecutions cannot be brought about by methods that offend "a sense of justice." *Rochin* v. *California*, 342 U. S. 165, 92 L. Ed. 183, 72 S. Ct. 205, 25 A. L. R. (2d) 1396; *Foster* v. *Ill.*, 332 U. S. 134, 21 L. Ed. 1955, 67 S. Ct. 1716.

The admission of evidence for or against the accused must be according to the established rules in such state in all such cases, and the punishment must be authorized by law. *Powell* v. *Alabama*, 287 U. S. 45, 77 L. Ed. 158, 53 S. Ct. 55, 84 A. L. R. 527; *Frank* v. *Mangum*, 237 U. S. 309, 59 L. Ed. 969, 35 S. Ct. 582; *Ong Chang Wing* v. *United States*, 218 U. S. 272, 54 L. Ed. 1040, 31 S. Ct. 15, 48 L. R. A. (N. S.) 1084; *Ker* v. *Illinois*, 119 U. S. 436, 30 L. Ed. 421, 7 S. Ct. 225.

A state must give one whom it deprives of freedom the opportunity to open an inquiry into the intrinsic fairness of the criminal process even though it appears proper on the surface. *Carter* v. *Illinois*, 329 U. S. 173, 19 L. Ed. 172, 67 S. Ct. 216.

The suppression of evidence favorable to the accused by the prosecution is a denial of due process of law, entitling the accused to release from custody. *Ashcraft* v. *Tenn.*, 327 U. S. 274, 90 L. Ed. 667, 66 S. Ct. 544.

The 14th Amendment to the Federal Constitution is a protection against criminal trials in state courts conducted in such a manner as amounts to a disregard of fundamental fairness and in a way that necessarily prevents a fair trial. *Lyons* v. *Okla.*, 322 U. S. 596, 88 L. Ed. 1481, 64 S. Ct. 208.

The fact that confessions introduced into evidence on trial of the criminal case in a state court were conclusively adjudged by the decision of the highest court of the State to be admissible under the state law, notwithstanding the circumstances under which they were made, does not answer the question whether due process was lacking. *Lisenba* v. *Cal.*, 86 L. Ed. 166.

The proceedings in the appellate court, as well as those in the trial court, must be considered in determining whether due process of law has been afforded or denied. *Cole* v. *State of Ark.*, 68 S. Ct. 514, 338 U. S. 196, 92 L. Ed. 644; *Frank* v. *Mangum*, 35 S. Ct. 582, 237 U. S. 309, 59 L. Ed. 969; *United States, ex rel. Henson* v. *Mills*, 21 F. Supp. 616; *Birmingham* v. *Reed*, 44 So. (2d) 607, 35 ALa App. 31.

The procedural rules of the courts are a part of due process of law and must be observed in the interests of orderly functioning of the administration of justice. *Peo* v. *Gilbert*, 25 C. (2d) 422, 154 P. (2d) 657.

Where the court or an officer thereof has knowledge requiring the exercise of a duty on behalf of the accused, failure to exercise such duty constitutes a denial of due process.

The phrase "due process of law" formulates a concept less rigid and more fluid than those envisaged in other specific and particular provisions of the Bill of Rights; and its asserted denial is to be tested, not as a matter of rule, but rather by an appraisal of the totality of the facts involved in a particular case. *Betts* v. *Brady*, 316 U. S. 455, 86 L. Ed. 1595, 62 S. Ct. 1252.

Although the due process clause of the 14th Amendment does not incorporate, as such, the specific guarantees found in the 6th Amendment, a denial by a State of the rights or privileges specifically embodied in that Amendment may, in a given case, operate to deprive a defendant of due process of law. *Betts* case, *supra*.

The law of searches and seizures is the interplay of the 4th and 5th Amendments, and it reflects a dual purpose: protection of the individual against compulsory production of evidence and protection of the privacy of the individual, his right to be let alone.

It can be seen plainly that the regulation under this or-

dinance has no relation to the protection of health, comfort or well-being of the community, but is a clear invasion of personal and property rights under the guise of police regulation, and is therefore unconstitutional. *Ex parte Quarz*, 149 Cal. 79; *Boyd* v. *City of Sierra Madre*, 41 C. A. 520.

Mens Rea

It is a time-honored proposition that the existence of a crime requires two essential elements. . . . The other is internal, and is generally referred to as criminal intent, guilty knowledge or intent, or *mens rea*. Cal. Pen. Code, Section 20.

It may be seen that the element of wilfulness is absent from the evidence in this case. The contention that it is not necessary to show wilfulness or criminal intent in the instant connection is erroneous. The exception to the general common-law rule requiring *mens rea* should be extended with caution. In fact, many scholars of the subject have held that any departure from the *mens rea* rule is unfortunate and unnecessary. It is one thing to hold a person civilly liable for negligence; quite another to brand him a criminal when his intentions are unimpeachable. Surely the exception should not be applied to registration laws, which should be required to be brought home to the intended registrants, as under Section 290, Penal Code, before prosecution may be had. This is elementary constitutional justice. The exception to the *mens rea* doctrine has been limited to traffic matters, alcoholic beverage law violations, pure food and drug laws, and similar matters, and as to such situations, the standard applied has been as follows; that the acts prohibited be a *menace to public health and morals* and be classed as *mala prohibita*. *Peo* v. *Schoepflin*, 78 Misc. 62, 137 N. Y. Supp. 675.

Continuing in the said case, the court held: "I appre-

ciate that the purpose of the legislature to dispense with the necessity of providing specific criminal intent, either expressly or impliedly, in any case *should be clear*. . . . Since the general situation involved strikes me as one warranting legislative action in the exercise of the police power for the purpose of protection of the public from *physical injuries* and of promoting the public safety thereby."

To dispense with the *mens rea* requirement, as done by the trial and appellate courts in the instant case, in connection with the criminal registration ordinance is to make it a "trap for the unwary." Although as a basic premise, ignorance of the law is no excuse for its violation, there are situations in which knowledge of the law and knowledge of facts bringing one within a specific law, are inseparable. In other words, there are exceptions to this general rule, as where the law is not settled, is obscure, or is susceptible of more than one reasonable construction. *State* v. *Cutter*, 36 N. J. Law 125; *Burns* v. *State*, 123 Tex. Cr. 611, 61 S. W. (2d) 512. This exception should obviously be applied in the instant situation in view of the unsettled and obscure nature of the California distinction between felonies and misdemeanors, particularly as to the Court's discretion therein, as otherwise an unconscionable burden is placed on the shoulders of potential offenders in that they are required to make a legal determination and at the same time are unable to assert their ignorance or good faith.

Furthermore, an exception may be seen to apply generally in cases where there is a duty to act, and the offense is thus a failure or omission to act. Before such an omission can be wilful, there is an implied knowledge of the duty imposed by the statute or ordinance. This principle has been expressed as follows: The term "wilful failure," giving a right of action for injuries occasioned by any violation of or wilful failure to comply with, the provisions of the act, implies more than mere non-conformity, in-

attention, thoughtlessness or heedlessness, and goes to the intent implied in failing to do the thing after attention is called to it or notice given under the statute by the mine inspector, and implies the intentional and conscious violation and persistent refusal or neglect not necessarily with evil or malicious intent; it amounts to more than mere passive negligence; it is active refusal. *Princeton Coal Min. Co.*, 176 Ind. 469.

The Federal Government has gone even farther. A refusal by one subject to requirements of registration and payment of Gamblers' Occupational Tax, to register on form requiring certain information he deemed self-incriminatory, was not "wilful" within contemplation of provisions subjecting a wilful violafor to criminal penalties, when the law at the time of the refusal was unsettled in that it had not as yet been determined that Gamblers' Occupational Tax Act did not require a taxpayer to give information protected under the privilege against self-incrimination. *United States* v. *Kahriger*, 210 F. (2d) 565. It is submitted that it is a denial of due process to penalize an act of omission without proper prior information regarding a duty to act.

Vagueness of Ordinance

To satisfy the constitutional requirement of due process, a statute or ordinance must be sufficiently explicit, in its description of the acts, conduct or conditions required or forbidden, to prescribe the elements of the offense with reasonable certainty, fix an ascertainable standard of guilt, and make known to those to whom it is addressed what conduct on their part will render them liable for its penalties, and not be so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application. *Whitney* v. *California*, 47 S. Ct. 741, 274 U. S. 357, 71 L. Ed. 1095.

On the face of it, the ordinance herein considered is too vague to be valid criminal legislation, and furthermore, constitutes an invalid delegation to the chief of police of legislative power. The language of Penal Code Section 647.5, included by reference in the instant ordinance, was held, in an uncontradicted dissenting opinion in *Edelman* v. *California*, 344 U. S. 357, 73 S. Ct. 293, 97 L. Ed. 387, Headnote 9 (the majority opinion did not consider the legal issues, but dismissed for procedural irregularities), too vague to comply with due process requirements of certainty so fundamental to valid criminal legislation. The same may be said of the expression "punishable as a felony," in view of the California definition of felony and misdemeanor; and further of the paragraph 10 of Section 52.39, Municipal Code, "Such other and further information as may be required by the Chief of Police for the purpose of aiding and assisting in carrying into effect the provisions and intent of Sections 52.38 to 52.43, inclusive." Such a catch-all phrase may be appropriate to a constitution outlining legislative power of a residuary nature. When included in a statute, however, it is an unconstitutional grant of legislative power, in the instant case, to the Chief of Police.

The Cahan Case

Under the principal holdings of the *Cahan* case (*Peo* v. *Cahan*, 44 C. (2d) 434; 383 P. (2d) 905) and subsequent Supreme Court of California decisions, a false arrest may no longer be made the basis of prosecution. In the instant case, under evidence which was erroneously excluded by the trial court, it would have been made to appear that the arrest herein was made in the daytime, for a misdemeanor not committed in the officer's presence, or at all; that there was not even any allegation of probable cause, or charge of felony, to justify arrest therefor. Although

the *Cahan* case had not been decided at the time of the arrest herein, the principle of law therein involved was substantially raised by appellant upon demurrer, at the trial, and upon appeal.

Ordinarily the admissibility of evidence will not be reviewed on appeal in the absence of proper objection in the trial court, but this rule is not applicable to appeals based on the admission of illegally obtained evidence in cases that were tried before the Supreme Court decision holding such evidence inadmissible. *Peo* v. *Kitchens*, 46 Adv. Cal. 257.

VIII. Conclusion

Section 52.39 of the Municipal Code interferes with rights of personal dignity and privacy in an unnecessary, arbitrary, and unjustifiable manner, thereby transgressing our constitutional right to liberty and the pursuit of happiness. Conditions do not warrant such interference with human rights. The ordinance is a step backward toward the criminal jurisprudence of the Dark Ages, to the Star Chamber, the Inquisition, Bills of Attainder, and other methods against which our constitutional guarantees were provided in our basic governmental document. While it is true that its enforcement would facilitate police activity, so also would wire-tapping, self-incrimination, search without warrant, and other effective methods such as forced confessions, but the American Way is opposed to such facilitation of criminal prosecution at the expense of basic human liberties.

In the editorial section of the Prison Journal published in April, 1936, by the Pennsylvania Prison Society the following comment appeared:

"We are utterly opposed to the Criminal Registration Law in principle because we believe, with some competent authorities, that it is unconstitutional. A more important

objection, perhaps, than this, is the psychic effect which it has on every man who has committed a crime. It opens up old sores. It reaffirms the conviction which exists in the minds of too many of these people that the police are anxious to get something on them.

"Moreover, it is extremely doubtful that the law accomplishes anything. The men who want to be law-abiding and forget their past criminal record will register, while those who are engaging in criminal activities of course will not.

"We are prone to forget that voluntary association and cooperation are fundamental principles of democracy. Any departure from these principles in law-making invites resistance, and strikes at the roots of democracy."

We respectfully submit to this Honorable Court that the ordinance herein involved is in fact so restrictive, so unreasonable, so abusive, as to be invalid police power legislation; that it should be held unconstitutional; and that the conviction of appellant should be reversed.

Respectfully submitted,

SAMUEL C. MCMORRIS,
Attorney for Appellant

APPENDIX A

Municipal Code of the City of Los Angeles, Secs. 52.39, 52.38

Section 52.39: (Excerpts)

(a) It shall be unlawful for any convicted person to be or remain in the City of Los Angeles for a period of more than five days, without, during such five-day period, registering with the Chief of Police in the manner hereinafter prescribed.

(d) Every person required by this section to register shall do so by filing with the Chief of Police of the City of Los Angeles a statement in writing, signed by such person, upon a form prescribed and furnished by the Chief of Police, giving the following information:

1. His true name and all aliases which he has used or under which he may have been known;

2. A full and complete description of his person;

3. The kind, character and nature of each crime of which he has been convicted;

4. The name under which he was convicted in each instance and the date thereof;

5. The place where each of such crimes was committed and the place or places of conviction;

6. The name, if any, and the location of each prison, reformatory, jail or other penal institution in which he was confined or to which he was sentenced;

7. The location and address of his residence, stopping place, living quarters or place of abode in the City; if more than one residence, stopping place, or place of abode, that fact must be stated and the location and address of each given;

8. A statement of the kind of residence, stopping place or place of abode in which he resides, whether the same is temporary or permanent, *i.e.*, whether the same is a private residence, hotel, apartment house or other building or structure;

9. The length of time he has occupied such place of

residence, stopping place or place of abode; and the length of time he expects or intends to remain in the City;

10. Such other and further information as may be required by the Chief of Police for the purpose of aiding and assisting in carrying into effect the provisions and intent of Sections 52.38 to 52.43, inclusive.

Section 52.38 supplies the definition of "convicted person":

(a) Any person, who, subsequent to January 1, 1921, has been or hereafter is convicted of an offense punishable as a felony in the State of California, or who has been or who is hereafter convicted of any offense in any place other than the State of California, which offense, if committed in the State of California, would have been punishable as a felony;

(b) Any person who, subsequent to January 1, 1921, has been or hereafter is convicted in the State of California, or elsewhere, of the violation of any law, whether the same is or is not punishable as a felony:

1. Relating to or regulating the possession, distribution, furnishing, or addiction to the unlawful use of any narcotic as defined and referred to in Division 10 of the California Health and Safety Code.

2. Regulating or prohibiting the carrying, possession, or ownership of any concealed weapon, or deadly weapon, or any weapon capable of being concealed, or regulating or prohibiting the possession, sale or use of any devise, instrument, or attachment designed or intended to be used for the purpose of silencing the report, or concealing the discharge of any firearm;

3. Regulating or prohibiting the use, possession, manufacture, or compounding of tear gas, or any other gas, which may be used for the purpose of temporarily or permanently disabling any human being.

(d) Any person who has been, since January 1, 1921, or who hereafter is convicted of a crime in the State of California, under the provisions of one or more of the following sections of the Penal Code of California, to wit: 264, 265, 286, 288, 288a; 647a or of Subdivisions 1 and 2 of Sections

311 of said Code, or who has been since January 1, 1921, or hereafter is convicted in any place other than the State of California of an offense which, if committed in this State, would have been punishable under one or more of said sections.

1. Any person who has since January 1, 1945, or who hereafter is convicted of a crime in the State of California under the provisions of Section 647(5) of the Penal Code of the State of California, or who has been since January 1, 1945, or hereafter is convicted in any place other than the State of California of any offense which, if committed in this State, would have been punishable under said section.

(e) Any person who has been, since January 1, 1921, or hereafter is convicted in the State of California or elsewhere of any attempt or conspiracy to commit any offense described or referred to in this section.

(f) Provided, however, that any person, except as hereinafter set forth, whose conviction is or has been set aside in a manner provided by law, shall not be deemed a convicted person; provided further, however, that one who has been convicted of the commission of one or more of the crimes referred to in Subdivision (d) hereof, and whose conviction has been set aside at the termination of probation, and in connection therewith, shall be considered a convicted person, as such term is used in Section 52.38 to Section 52.43 inclusive.

APPENDIX B

California Penal Code Sections 20, 290, 644, 647.5, 841, and 1203.4

Section 20. To constitute crime there must be unity of act and intent. In every crime or public offense there must exist a union, or joint operation, of act and intent, or criminal negligence.

Sec. 290. Registration of sex offenders.

Any person who, since the first day of July, 1944, has been or is hereafter convicted in the State of California

of the offense of assault with intent to commit rape or the infamous crime against nature, under Section 220, or of any offense defined in Sections 266, 267, 268, 285, 286, 288, 288a, subdivision 1 of Section 647a, subdivision 3 or 4 of Section 311 of this code, or of any offense involving lewd and lascivious conduct under Section 702 of the Welfare and Institutions Code; or any person who since said date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses; or any person who since said date or at any time hereafter is discharged or paroled from a penal institution where he was confined because of the commission or attempt to commit one of the above-mentioned offenses; or any person who since said date or at any time hereafter is determined to be a sexual psychopath under the provisions of Chapter 4 of Part 1 of Division 6 of the Welfare and Institutions Code; or any person who has been since said date or is hereafter convicted in any other State of any offense which, if committed or attempted in this State, would have been punishable as one or more of the above-mentioned offenses, shall within 30 days of his coming into any county or city, or city and county in which he resides or is temporarily domiciled for such length of time, register with the chief of police of the city in which he resides or the sheriff of the county if he resides in an incorporated area.

Notice of duty to register; prisoner or inmate. Any person who, after the first day of August, 1950, is discharged or paroled from a jail, prison, school, road camp, or other institution where he was confined because of the commission or attempt to commit one of the above mentioned offenses or is released from a state hospital to which he was committed as a sexual psychopath under the provisions of Chapter 4 of Part 1 of Division 6 of the Welfare and Institutions Code shall, prior to such discharge, parole, or release, be informed of his duty to register under this section by the official in charge of the place of confinement or hospital and the official shall require the person to read and sign such form as may be required by the State Bureau of Criminal Identification and Investigation, stating that the duty of the person to register under this section has been explained to him. The official in charge of the place

of confinement or hospital shall obtain the address where the person expects to reside upon his discharge, parole, or release and shall report such address to the State Bureau of Criminal Identification and Investigation. The official in charge of the place of confinement or hospital shall give one copy of the form to the person, and shall send two copies to the State Bureau of Criminal Identification and Investigation, which bureau, in turn, shall forward one copy to the appropriate law enforcement agency having local jurisdiction where the person expects to reside upon his discharge, parole, or release.

Notice of duty to register; probationer or one paying fine. Any person who after the first day of August, 1950, is convicted in the State of California of the commission or attempt to commit any of the above-mentioned offenses and who is released on probation or discharged upon payment of a fine shall, prior to such release or discharge, be informed of his duty to register under this section by the court in which he has been convicted and the court shall require the person to read and sign such form as may be required by the State Bureau of Criminal Identification and Investigation, stating that the duty of the person to register under this section has been explained to him. The court shall obtain the address where the person expects to reside upon his release or discharge and shall report within three days such address to the State Bureau of Criminal Identification and Investigation. The court shall give one copy of the form to the person, and shall send two copies to the State Bureau of Criminal Identification and Investigation, which bureau, in turn, shall forward one copy to the appropriate law enforcement agency having local jurisdiction where the person expects to reside upon his discharge, parole or release. . . .

Sec. 644. Habitual criminals; life imprisonment; exceptional cases, discretion of court; effect upon death penalty.

(a) Every person convicted in this State of the crime of robbery, burglary of the first degree, burglary with explosives, rape with force or violence, arson as defined in Section 447a of this code, murder, assault with intent to commit murder, train wrecking, felonious assault by use of

force or dangerous or deadly weapons, rape or fornication or sodomy or carnal abuse of a child under the age of 14 years, or any act punishable under Section 288 of this code, conspiracy to commit any one or more of the aforementioned felonies, who shall have been previously twice convicted upon charges separately brought and tried, and who shall have served separate terms therefor in any State prison and/or Federal penal institution either in this State or elsewhere, of the crime of robbery, burglary, burglary with explosives, rape with force or violence, arson, murder, assault with intent to commit murder, grand theft, bribery, of a public official, perjury, subornation of perjury, train wrecking, feloniously receiving stolen goods, felonious assault with a deadly weapon, extortion, kidnaping, mayhem, escape from a State prison, rape or fornication or sodomy or carnal abuse of a child under the age of 14 years, or any act punishable under Section 288 of this code, conspiracy to commit any one or more of the aforementioned felonies, shall be adjudged a habitual criminal and shall be punished by imprisonment in the State prison for life;

(b) Every person convicted in this State of the crime of robbery, burglary of the first degree, burglary with explosives, rape with force or violence, arson as defined in Section 447a of this code, murder, assault with intent to commit murder, train wrecking, felonious assault with a deadly weapon, extortion, kidnaping, escape from a State prison by use of force or dangerous or deadly weapons, rape or fornication or sodomy or carnal abuse of a child under the age of 14 years, or any act punishable under Section 288 of this code, conspiracy to commit any one or more of the aforementioned felonies, who shall have been previously three times convicted, upon charges separately brought and tried, and who shall have served separate terms therefor in any State prison and/or Federal penal institution, either in this State or elsewhere, of the crime of robbery, burglary, burglary with explosives, rape with force or violence, arson, murder, assault with intent to commit murder, grand theft, bribery of a public official, perjury, subornation of perjury, train wrecking, feloniously receiving stolen goods, felonious assault with a

deadly weapon, extortion, kidnaping mayhem, escape from a State prison, rape or fornication or sodomy or carnal abuse of a child under the age of 14 years, or any act punishable under Section 288 of this code, conspiracy to commit any one or more of the aforementioned felonies, shall be adjudged an habitual criminal and shall be punished by imprisonment in the State prison for life. . . .

Sec. 647. Vagrancy, definitions; punishment

5. Every lewd or dissolute person, or every person who loiters in or about public toilets in public parts

Is a vagrant, and is punishable by a fine of not exceeding ($500) or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Sec. 841. Formalities in making arrest; exceptions

Arrest, How Made. The person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of the arrest, and the authority to make it, except when the person to be arrested is actually engaged in the commission of or an attempt to commit an offense, or is pursued immediately after its commission, or after an escape.

Sec. 1203.4. Discharged probationer; change of plea or vacation of verdict; dismissal of charge; release from penalties and disabilities; application; pleading prior conviction in prosecution for subsequent offenses.

Every defendant who has fulfilled the conditions of his probation for the entire period thereof, or who shall have been discharged from probation prior to the termination of the period thereof, shall at any time thereafter be permitted by the court to withdraw his plea of guilty and enter a plea of not guilty; or if he has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and in either case the court shall thereupon dismiss the accusations or information against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted. The probationer shall be informed of this

right and privilege in his probation papers. The probationer may make such application and change of plea in person or by attorney, or by the probation officer authorized in writing. . . .

Sec. 17. Felonies and misdemeanors defined; offense punishable as either felony or misdemeanor; commitment to youth authority.

A felony is a crime which is punishable with death or by imprisonment in the State prison. Every other crime is a misdemeanor. When a crime, punishable by imprisonment in the State prison, is also punishable by fine or imprisonment in a county jail, in the discretion of the court, it shall be deemed a misdemeanor for all purposes after a judgment other than imprisonment in the State prison, unless the court commits the defendant to the California Youth Authority. Where a court commits a defendant to the California Youth Authority upon conviction of a crime punishable by imprisonment in the State prison or fine or imprisonment in a county jail, in the discretion of the court, the crime shall be deemed a felony until and unless the court after the person committed has been discharged from control by the California Youth Authority, and only if he was not placed in a State prison by the authority during the period of such control, on application of the person so committed and discharged, makes an order determining that the crime of which he was convicted was a misdemeanor.

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IN THE

Supreme Court of the United States

October Term, 1956.

No. ~~598~~.

VIRGINIA LAMBERT,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

APPELLEE'S BRIEF.

ROGER ARNEBERGH,
City Attorney,
DONALD M. REDWINE,
Assistant City Attorney;
PHILIP E. GREY,
Deputy City Attorney,
400 City Hall,
Los Angeles 12, California,
Attorneys for Appellee.

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IN THE

Supreme Court of the United States

October Term, 1956.

No. 590.

VIRGINIA LAMBERT,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

APPELLEE'S BRIEF.

I.

Statement of the Case.

Appellant was charged in the Municipal Court of the Los Angeles Judicial District in a verified complaint with having violated the provisions of subdivision (a) of Section 52.39 of the Los Angeles Municipal Code [R. 8]. The proceedings had in the trial court are set forth in the record by the Docket Entries and the Engrossed Statement on Appeal, duly settled and certified by the trial judge [R. 1-8; 15-21]. This was the record before the Appellate Department of the Superior Court of Los Angeles County and upon which its decision was based.

Appellant sought an appeal to this Court under the provisions of 28 U. S. C. 1257 (2).

As noted in the Engrossed Statement on Appeal and the Docket Entries, on April 15, 1955, the Second Amended Complaint was filed [R. 8-9] and appellant was duly ar-

raigned thereon and entered a plea of not guilty to the offense therein charged [R. 3; 17]. The trial proceeded and, as witnesses for the prosecution were called to testify, appellant stipulated to all the material facts needed to establish the violation charged [R. 4, 17]. Appellant testified in her own behalf as to certain facts and offered to testify to many others [R. 17-18]. After argument by counsel, the jury was orally instructed, and later returned a verdict of guilty [R. 4-5, 18]. Motions for a new trial and in arrest of judgment were made and denied by the trial court. The Court suspended imposition of sentence and placed appellant on summary probation [R. 5, 20]. An appeal was thereafter taken to the Appellate Department of the Superior Court of Los Angeles County wherein the order appealed from was affirmed [R. 29-30]. This Court noted probable jurisdiction on November 19, 1956 [R. 33].

Most of appellant's statement of the facts of this case set forth in her Opening Brief is not based upon the evidence presented to the jury but is taken from her offers of proof made during the trial and from offers of proof made in connection with her motion in arrest of judgment [R. 17-20].

The facts as presented to the jury and as found by the Appellate Department to be sufficient to support the conviction are: that certified copies of judgments were introduced showing that appellant had been twice convicted of felonies; that she had not registered with the police department; that she had resided and had remained in the City of Los Angeles for the period specified by the ordinance and the complaint, and that her convictions had not been set aside in a manner provided by law at the time of her arrests [R. 16-17, 29-30].

II.

Question Presented for Review.

Appellee believes that the only question properly before this Court for review is as follows:

Is the decision of the Appellate Department of the Superior Court of the County of Los Angeles correct in holding that an ordinance requiring persons previously convicted of crime to register with the Chief of Police to be a reasonable regulation enacted under the police power of the State and not repugnant to the Constitution of the United States?

III.

Summary of Argument.

This ordinance is a reasonable police regulation, directed at the evil of professionalism in crime, providing a convenient method of ascertaining the number and whereabouts of persons who have previously been convicted, generally of crime of the felony class. The police department of the city is entitled to know the presence of such persons in order to be able to more fully protect the inhabitants of the city by preventing the commission of crimes against them by persons known to have committed particular offenses in the past. It does not subject such registered persons to any additional punishment nor does it restrict their movements. All it requires is notice of their presence and whereabouts. It aids the police department in the enforcement of statutes which prohibit the possession of firearms by persons previously convicted of a felony, etc.; aids parole and probation officers in their task of supervising persons in their charge. This ordinance may also be said to provide a protection to those who have previously been convicted of major

crimes, in that the police may be able to determine whether any such person is being victimized by others by reason of his past experience. It serves as a deterrent to persons previously convicted to commit further crime for the reason that being registered can be considered a ready guide to such person should he again become involved in criminal activity. It does not offend any constitutional right of any person required to comply with its provisions. The ordinance is based upon a reasonable classification and was enacted to correct what the City Council found to be a needed measure in aid of its police power and its duty to protect and prevent evil and harm to the inhabitants of the City of Los Angeles, and is no more burdensome than requiring the registration of aliens, passengers, members of secret organizations, lobbyists, foreign agents, persons accepting wagers, bootblacks, taxi drivers, voters and persons employed in certain types of businesses and professions.

IV.

The Statute Here Involved Is Constitutional.

The sections of the Los Angeles Municipal Code which are pertinent to this matter are set forth in full under Appendix A, being numbered Sections 52.38, 52.39, 52.40, 52.41 and 52.42.

Under California law, all presumptions and intendments are in favor of the constitutionality of a statute, and all doubts should be resolved in favor of its validity. The constitutionality of the purpose and application of legislative enactments are generally presumed.

People v. Western Fruit Growers, 22 Cal. 2d 494;
In re Porterfield, 29 Cal. 2d 91.

In accordance with the general principle that all rights are subject to a proper exercise of the police power, it is well-settled that the possession and enjoyment by the individual of his right of liberty are subject to such reasonable regulations and restraints as may be imposed by the state in the exercise of the police power in order to preserve the health, safety, morals and welfare of the community. The prevailing view is that individual rights must yield to proper and reasonable regulation imposed for the best interests of the entire community. Individuals may be deprived of life or liberty as punishment for crime. Persons arrested may be measured and photographed by police authorities. Without in any way violating the constitutional guaranties, a citizen may be compelled, by force if need be, against his will and without regard to his personal wishes or even his religious or political convictions, to take his place in the ranks of the army of his country and risk his life in its defense.

11 Am. Jur. pp. 1140-1142.

It has been stated that the police power is one of the least limitable of governmental powers, and in its operation often cuts down property and personal rights.

Queenside Hills Realty Co. v. Saxl, 326 U. S. 80.

When the state sees fit to regulate upon a matter which is within its police power, its authority over the subject is plenary and can be reviewed by the courts only to the extent of determining whether the regulation is reasonable. The modern tendency to defer to the legislative judgment as to the existence of evils requiring regulation, and to disregard charges that special interests have procured the enactment of the measure, is emphasized in the case of *Daniel v. Family Security Life Ins. Co.*, 336 U. S. 220.

The wisdom and necessity for this prohibition is primarily a matter for the determination of the Council of the City of Los Angeles. That determination should not be interfered with unless from an examination of the record this Court can say that such determination is without rational basis.

South Carolina State Highway Dept. v. Barnwell, 303 U. S. 177, 192.

A. The Ordinance Is Based Upon a Reasonable Classification.

The rule is well settled that a state may classify persons and objects for the purpose of legislation and pass laws applicable only to persons and objects within a designated class for the purpose of applying its police power. The equal protection clause of the Fourteenth Amendment does not intend to take from the states the right and power to classify the subjects of legislation. It does not prohibit or prevent classification, provided such classification of persons and things is reasonable for the purpose of legislation, is based on proper and justifiable distinctions, considering the purpose of the law, is not clearly arbitrary, and is not a subterfuge to shield one class or unduly to burden another. Proper classification is distinctly contemplated by this amendment. A state need not, in order to meet the requirements of equal protection, provide for abstract symmetry in its legislation but it may mark and set apart the classes and types of problems according to the needs and as dictated or suggested by experience.

Skinner v. Oklahoma, 316 U. S. 535.

Persons convicted of crime, particularly of a felony, have been subjected to legislation directed to them as a class. Various sections of the California Constitution

and Codes, set forth in full in Appendix B herein, are examples: California Constitution, Article 20, Sections 10 and 11; California Constitution, Article 4, Section 21; Government Code, Sections 1021, 1028 and 1405; Elections Code, Sections 298 and 299; Civil Code, Section 92; Code of Civil Procedure, Sections 199 and 2051; Penal Code, Sections 98, 1072, and 12021.

In the *Matter of the Application of Gerino Ranceriz*, 193 Cal. 633, the California Supreme Court held a statute prohibiting unnaturalized foreign-born persons and persons who have been convicted of a felony against the person of another, to have a firearm in his possession, etc., to be a proper exercise of the police power and not invalid under the Fourteenth Amendment. It was there stated on page 630:

> "It cannot be assumed that the legislature did not have evidence before it, or that it did not have reasonable grounds to justify the legislation, as, for instance, that unnaturalized foreign-born persons and persons who have been convicted of a felony were more likely than citizens to unlawfully use firearms or engage in dangerous practices against the government in times of peace or war, or to resort to force in defiance of the law. To provide against such contingencies would plainly constitute a reasonable exercise of the police power."

The ruling of the above case was later reaffirmed by the California District Court of Appeal in the case of *People v. Cannizzaro*, 138 Cal. App. 28.

In *People v. James*, 71 Cal. App. 374, it was held that the terms of the Firearm's Act, Stats. 1923, p. 696, which excluded a person who had been convicted of a felony from the right to own or possess firearms, was not vio-

lative of Section 11 of Article 1 of the California Constitution, which requires all laws to have a uniform operation. The court in its decision quoted from the case of *Patsone v. Pennsylvania*, 232 U. S. 138, as follows:

> ". . . a state may classify with reference to the evil to be prevented, and that if the class discriminated against is or reasonably might be considered to define those from whom the evil is to be feared it properly may be picked out. A lack of abstract symmetry does not matter. The question is a practical one dependent upon experience. . . . It is not enough to invalidate the law that others may do the same thing and go unpunished if as a matter of fact it is found that the danger is characteristic of the class named."

In the case of *People v. Dunlop*, 102 Cal. App. 2d 314, the court stated in connection with the "habitual criminal" statute, on page 316, that

> ". . . The prior convictions had given them a new status by reason whereof; upon conviction for a subsequent felony, the penalty for the latter was increased. . . . That prior convictions are not elements of a separate offense or of that alleged in the accusation is settled law. They merely aggravate the position of one accused of the primary offense in that he is by reason of his former imprisonment placed in the classification of those who may never be reformed. Such classifying does no violence to any privilege guaranteed by either the state or the federal Constitution.".

And on page 317, the court further stated:

> ". . . and it does not deny equal protection of the law vouchsafed by the Fourteenth Amendment. . . ."

In the case of *Skinner v. Oklahoma, supra* (316 U. S. 35), it was stated that under our constitutional system the States in determining the reach and scope of particular legislation need not provide abstract symmetry; that they may mark and set apart the classes and types of problems according to the needs and as dictated or suggested by experience; that this Court recently reaffirmed the view that the equal protection clause does not prevent the legislature from recognizing degrees of evil; that a state is not constrained in the exercise of its police power to ignore experience which marks a class of offenders or a family of offenses for special treatment; nor is it prevented by the equal protection clause from confining its restrictions to those classes of cases where the need is deemed to be clearest.

B. Registration Statutes Have Been Held To Be Proper Police Regulations.

This Court held a statute, requiring among other things that every master or commander of any ship arriving at the port of New York to make a report in writing within 24 hours of arrival to the recorder, giving the name, place of birth, last legal settlement, age and occupation of every person arriving as a passenger, whether coming from points within or without the United States, to be a valid police regulation, in the case of the *Mayor, Aldermen and Commonalty of the City of New York v. Miln*, 11 Peters 102, 9 L. Ed. 648. It was there stated that, from the scope of the law it was apparent that the object of the Legislature was to prevent New York from being burdened by an influx of persons brought thither in ships either from foreign countries or from any other of the States, and for that purpose a report was required

so that necessary steps might be taken by the city authorities to prevent them from becoming chargeable as paupers. This Court stated:

> "If we look at the persons for whose benefit it was passed, they are the people of New York, for whose protection and welfare the Legislature of that State are authorized and in duty bound to provide.
>
> "If we turn our attention to the purpose to be attained, it is to secure that very protection, and to provide for that very welfare. If we examine the means by which these ends are proposed to be accomplished, they bear a just, natural, and appropriate relation to those ends."

It was further stated:

> "We consider it unnecessary to pursue this comparison further, because we think that if the stronger powers under the necessity of the case, by inspection laws and quarantine laws to delay the landing of a ship and cargo, which are the subjects of commerce and navigation, and to remove or even to destroy unsound and infectious articles, also the subject of commerce, can be rightfully exercised; then that it must follow as a consequence that powers less strong, such as the one in question, which operates upon no subject either of commerce or navigation, but which operates alone within the limits and jurisdiction of New York upon a person at the time not even engaged in navigation, is still more clearly embraced within the general power of the States to regulate their own internal police, and to take care that no detriment come to the commonwealth.
>
> "We think it as competent and as necessary for a State to provide precautionary measures against the moral pestilence of paupers, vagabonds, and possible convicts, as it is to guard against the physical

pestilence which may arise from unsound and infectious articles imported, or from a ship, the crew of which may be laboring under an infectious disease."

Legislation requiring registration and fingerprinting of aliens was enacted by Congress on June 28, 1940, as the Alien Registration Act, 8 U. S. C. sec. 1304-1306. In the dissenting opinion of Mr. Justice Stone, in *Hines v. Davidowitz*, 312 U. S. 52, at page 75, he stated:

> "The opinion of the Court does not deny, and I see no reason to doubt that the Pennsylvania registration statute, when passed, was a lawful exercise of the constitutional power of the state. With exceptions not now material it requires aliens resident in the state, who have not declared their intention to become citizens, to register annually, to pay a registration fee of $1.00, and to carry a registration identification card. It affords to the state a convenient method of ascertaining the number and whereabouts of aliens within the state, which it is entitled to know, and a means of their identification. It is an available aid in the enforcement of a number of statutes of the state applicable to aliens whose constitutional validity has not been questioned, one of which has been held by this Court not to infringe the Fourteenth Amendment. Patsone v. Pennsylvania, 232 U. S. 138, 58 L. Ed. 539, 34 S. Ct. 281.".

Legislation which was directed toward unmasking the Ku Klux Klan by requiring the identification of membership by certain organizations having an oath as a prerequisite or condition of membership, was upheld in *Bryant v. Zimmerman*, 278 U. S. 63. It was stated there:

> "The relator's contention under the due process clause is that the statute deprives him of liberty in that it prevents him from exercising his right of mem-

bership in the association. But his liberty in this regard, like most other personal rights, must yield to the rightful exertion of the police power. There can be no doubt that under that power the state may prescribe and apply to associations having an oath-bound membership any reasonable regulation calculated to confine their purposes and activities within limits which are consistent with the rights of others and the public welfare. The requirement in section 53 that each association shall file with the secretary of state a sworn copy of its constitution, oath of membership, etc., with a list of members and officers, is such a regulation. It proceeds on the twofold theory that the state within whose territory and under whose protection the association exists is entitled to be informed of its nature and purpose, of whom it is composed and by whom its activities are conducted; and that requiring this information to be supplied for the public files will operate as an effective deterrent from the violations of public and private right to which the association might be tempted if such a disclosure were not required. The requirement is not arbitrary or oppressive, but reasonable and likely to be of real effect. Of course, power to require the disclosure includes authority to prevent individual members of an association which has failed to comply from attending meetings or retaining membership with knowledge of its default. We conclude that the due process clause is not violated."

The disclosure provisions of the Federal Lobbying Act, 60 Stat. 812, 839, 2 U. S. C. sections 261-270, were held to be valid and not to be unconstitutionally vague nor to violate the First Amendment rights of freedom of speech and press or freedom to petition the government in the case of *United States v. Harriss*, 347 U. S. 612.

In an earlier case, the registration provisions of Section 308 of that Act were held valid by a lower federal court in *United States v. Slaughter* (1950, D. C. Dist. Col.), 89 Fed. Supp. 205.

The registration provisions of the federal excise tax on the business of accepting wagers, Revenue Act of 1951, 26 U. S. C. (Supp. V) section 3285-3291, were held not to violate the privilege against self-incrimination as guaranteed by the Fifth Amendment in *United States v. Kahriger* (1952), 345 U. S. 22. This Court stated therein:

> "Nor do we find the registration requirements of the wagering tax offensive. All that is required is the filing of names, addresses, and places of business. This is quite general in tax returns. . . ."

It was further stated in connection with the assertion that the wager tax was unconstitutional because it is a denial of the privilege against self-incrimination:

> "Since appellee failed to register for the wagering tax, it is difficult to see how he can now claim the privilege even assuming that the disclosure of violations of law is called for. . . . If the form of return provided called for answers that the defendant was privileged from making, he could have raised the objection in the return, but could not on that account refuse to make any return at all."

The views expressed in the decision of the *Kahriger* case, *supra*, were reaffirmed in *Lewis v. United States*, 348 U. S. 419.

The Foreign Agent's Registration Act, 52 Stat. 631, as amended, 22 U. S. C. sections 611-21 (Supp. 1950), was upheld in the case of *United States v. Peace Infor-*

This Court has not yet decided whether a federal or state statute requiring registration of members of the Communist Party is valid under the Federal Constitution. In cases involving this question the judgments of the courts below were vacated on procedural grounds. *Albertson v. Millard* (1953), 345 U. S. 242, and *Communist Party v. Subversive Activities Control Board* (1951), 351 U. S. 115, were such cases. In the *Albertson* case the Michigan Communist Control Act, requiring the registration of Communists, was upheld by the District Court (106 Fed. Supp. 635).

The case of *People v. McCormick* (1951), 102 Cal. App. 2d Supp. 954, cited by appellant, held that where the danger of self-incrimination appears from the mere reading of the ordinance, it was unconstitutional. It must be pointed out that the ordinance there considered required only persons presently members of a Communist organization to register, and thus subjected themselves to prosecution for a felony under the Criminal Syndicalism Act of the State, which does not outlaw for a period of three years. The court in its decision stated that this ordinance was not "a simple police power regulation requiring identification of citizens."

In the ordinance before this Court the registration requirement of disclosing past offenses is for crimes already prosecuted are barred by such prior conviction.

In some jurisdictions the Constitution, in addition to specifying qualifications to vote, expressly authorizes the legislature to provide for the registration of voters. Under such authorization there can be no question as to the validity of the registration laws insofar as the power of the legislature to enact them is concerned, and where, pursuant to such a provision, the legislature enacts a law

providing for a reasonable, uniform, and impartial registration of voters, the electors must be registered in order to be entitled to vote. Likewise, by the great weight of authority, the power of the legislature to provide for the registration of voters, not only under, but in the absence of, express constitutional authority, is recognized. Such statutes are sustained upon the theory that they do not impair or abridge the elector's privilege, but merely regulate its exercise, and they are generally held to be impregnable against assaults upon various constitutional grounds.

Although some statutes relating to registration of voters have been condemned on various constitutional grounds, such enactments more frequently have been sustained as valid and reasonable regulations of the exercise of the elective franchise. They have been usually sustained as against the contention that they add to the constitutional qualifications of voters, are violative of due process of law, abridge the privileges and immunities of a citizen, or are violative of constitutional provisions that all elections shall be free and equal.

18 Am. Jur. pp. 231 and 232.

It is conceded that a sovereign government has power to compel its citizens or nationals to serve in its military forces when needed, and so-called "draft," "conscription," and "selective service" acts have been uniformly upheld as against various objections on constitutional grounds.

129 A. L. R. pp. 1171-1221.

A city ordinance requiring the registration and identification of persons who work as bootblacks, or sell magazines, pamphlets and newspapers in the streets, was up

held in *City of Manchester v. Leiby*, 117 F. 2d 661. (Cert. denied, 313 U. S. 562.) It was there held that such ordinance imposed no substantial burden upon the constitutional rights of freedom of the press or the free exercise of religion; that said ordinance was to enable the city to keep track of persons selling literature on the streets and was a reasonable police regulation.

An ordinance requiring taxi or bus drivers to register with the police was upheld in *Walton v. City of Atlanta*, 181 F. 2d 693. (Cert. denied, 340 U. S. 823.) The court stated, in holding this statute constitutional:

> "It is not for us to censor these ordinances or to pass upon the wisdom of every provision in them. Our duty is to decide and declare whether or not they deprive the appellants of any right, privilege or immunity, secured to them by the Constitution and laws of the United States, providing for equal rights of citizens or of all persons within the jurisdiction of the United States. . . .
>
> "We cannot say that it would not be within the power of a state to require all inhabitants to have their fingerprints taken by the police; and, if so, we see no reason why all members of the class known as bus or taxi drivers should not be so required. . . . The assailed provisions are not void upon the face of the ordinances; . . ."

In *Norman v. City of Las Vegas*, 64 Nev. 38, 177 P. 2d 442, the ordinance of the City of Las Vegas required fingerprinting and photographing of persons seeking employment in establishments selling alcohol beverages at retail for consumption on the premises; required imprints to be forwarded to California and federal bureaus of identification with a request that previous records be for-

warded, and provided that such information received should be treated as confidential. It was there held that such ordinance was not unconstitutional as violating the privilege and immunities clause of the Federal Constitution or the Nevada constitutional guaranties of life, liberty and the pursuit of happiness. An interesting quotation from Blackstone's Commentaries (125-6) is found in the court's opinion which is most pertinent here. It is as follows:

> "The absolute rights of man, considered as a free agent, are denominated the natural liberty of mankind, which consists in a power of acting as one thinks fit, without any restraint or control unless by the law of nature; being a right inherent in us by birth, when God endowed man with free will. But every man, when he enters into society, gives up a part of his natural liberty as the price of so valuable a boon, and obliges himself to conform to those laws, which the community has thought proper to establish. Otherwise, there would be no security to individuals in any of the enjoyments of life."

The validity of the ordinance here in question was before the Appellate Department of the Superior Court of the County of Los Angeles, the court of last resort in such cases, in several instances. In an unreported original opinion in the case of *People v. Shirley*, CR. A. 1605, that court stated:

> "The purpose of the ordinance, of course, is to enable the law enforcement authorities to keep an eye on those residents whose past conduct has proven them to be seriously anti-social. All those who have been convicted of crimes punishable only as felonies come within the ordinance without further question as to the nature of their crimes. By provisions which

> we need not consider, a very few of the crimes classified as misdemeanors are deemed so anti-social that those convicted of them must report, under the ordinance; as a class, those convicted of misdemeanors are, with very few exceptions, exempt from its provisions. . . ."

This opinion was rendered ineffective upon the granting of a rehearing. Thereafter another unreported opinion was rendered which devoted itself to an interpretation of the words of the ordinance and held that the evidence was insufficient and did not answer the constitutional questions raised.

In the cases of *People v. Shannon,* CR. A. 2717, and *People v. Piscopo,* CR. A. 2720, the judgments of conviction were affirmed by said Appellate Department of the Superior Court without written opinion wherein it had been contended on appeal that the various sections of this ordinance were unconstitutional upon the same and similar grounds as those here made.

It is of interest to note that there has never been any constitutional question raised concerning the requirement that state-licensed professional persons register or file evidence of their state certificate in the county wherein they seek to practice their profession, such as Section 3071 of the Business and Professions Code which requires state-licensed optometrists to have their state certificate registered with the county clerk of the county in which his regular practice is maintained. Those practicing the medical profession are required to do the same under provisions of Section 2340 of the Business and Professions Code. Domestic and foreign corporations are required to file the articles of their incorporation in the county where their principal office is located and also in

each county wherein real property is owned. (Secs. 311; 312; 6402 Corporations Code.)

If the state or municipality is competent to require the registration of professional men in the place wherein they seek to practice even though determined to be qualified by higher authority, then there seems to be no good reason why a municipality may not require the registration of "professional criminals."

It is of interest to note that five states have enacted criminal registration statutes. They are Arizona, California, Illinois, New Jersey and Florida. Some forty-seven cities have enacted criminal registration ordinances. (University of Pennsylvania Law Review, Vol. 103, No. 1 (Oct. 1954) p. 65.) It would appear therefrom that the evil sought to be corrected and the protection of the public by such a regulation is not limited or novel to the City of Los Angeles.

C. The Ordinance Is a Reasonable Police Measure.

As a historical background and basis for legislation requiring the registration of "ex-convicts," it has been stated that in the early nineteen-thirties significant segments of the American public became alarmed at an apparently increasing rate of professional criminality. Legislative action to meet the new menace was said to be imperative. Federal investigating committees scoured the country for information which could form the basis for a national legislative solution. Such a committee was headed by Senator Copeland under Senate Resolution No. 74, Seventy-third Congress, 1st Session, 1933. In addition, state criminal laws were generally re-examined. In several instances penalties were increased, habitual and multiple offender laws were enacted and other new legis-

lation was passed to meet the criminal activity of that time. This activity formed the background in which the criminal registration ordinances had their inception.

In a recent article, Treatment of Recidivists, by Marcel Frym, in the Journal of Criminal Law, Criminology and Police Science, Vol. 47, No. 1, it was stated:

> "According to a report recently received from the Bureau of Criminal Statistics of the California State Department of Justice, only about 15.5 percent of the total of male admissions to California state prisons are without prior commitment, which leaves 84.5 percent of the men admitted with prior records. To be sure, this percentage of prior commitments includes misdemeanor and juvenile commitments. On the other hand, 35.7 percent of the admissions had had one or more prior prison records."

It would appear therefrom that the original cause for alarm is still a noteworthy consideration. The ordinance here involved is a reasonable police regulation thought by the City Council to be needed to afford protection to the residents of the community and needed as an aid to law enforcement agencies in providing a means of notice of the presence in the community of persons previously convicted so as to prevent, and more carefully scrutinize the action of those most likely to be the perpetrators of crime. It must be assumed that the legislative body had reason to believe there was a need for such legislation; that there was shown to said body some facts and figures which justified their belief that persons who had been previously convicted of felonies and certain types of misdemeanors were more likely to repeat in their activities and to cause harm to the inhabitants of the city, and that by requiring their registration, potential evil could be cor-

rected to some degree; that the requirement of such registration would deter and cause persons registered to try harder to stay within the law; that such legislation would enable law enforcement agencies to keep better track of those persons in the community more inclined to engage in criminal activities and would afford a better means of seeing that the various laws relating to persons previously convicted of felonies were enforced. It would also aid law enforcement in apprehending those who had committed a current crime by reason of their being registered as present in the community where the pattern of the current crime committed was known to have the same pattern, operation and method used in the past by such persons.

The requirement of disclosure of offenses for which the registrant had been convicted does not form a basis for any future additional punishment nor does it offend the self-incrimination clause. The registrant has already suffered punishment for the offenses shown and may not thereafter be tried therefor. The fact that in a future prosecution he may be punished as an habitual criminal does not arise from his disclosure but is based upon proof which is usually supplied by records from the state criminal courts, matters which are of public record.

Even the exercise of religion may be at some slight inconvenience in order that the State may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent.

Cantwell v. Connecticut, 310 U. S. 296.

It is the obligation of the government to protect life, liberty, and property against the conduct of the indifferent,

the careless, and the evil-minded. A recognition of this obligation is found in those exertions of the legislative power which have as an end the preservation of social order and the protection of the welfare of the public and of the individual. If such legislation be reasonably adapted to the end in view, affords a hearing before judgment, and is not forbidden by some other affirmative provision of constitutional law, it is not to be regarded as denying due process of law under the 14th Amendment.

City of Chicago v. Sturges, 222 U. S. 313.

Legislation for regulatory purposes, which dispenses with the condition of awareness of wrongdoing and places the burden of acting at his peril on a person otherwise innocent but standing in personal relation to a public danger, is a traditional means of regulation.

People v. Scott, 24 Cal. 2d 774.

The commission of various acts is made punishable under our criminal procedure, even though the doer be ignorant of the fact that the doing of the act constitutes an offense. A mistake of fact, or a want of intent, is not in every case a sufficient defense for the violation of a criminal statute. Statutes enacted for the protection of public morals, public health, and the public peace and safety, are apt illustrations of this rule.

People v. McClennegan, 195 Cal. 445, 469.

Appellant attempts to point out that this ordinance requires submission to police surveillance "for the rest of his natural life." It is submitted that appellant does not come within that class of persons so required, namely, those convicted of sex offenses (Sec. 52.38, subsecs. d and f) and therefore may not question such provision. One

charged with the commission of a crime under certain surrounding circumstances may not complain of the law because it might be unconstitutional as to others, or as to him under different surroundings. One attacking the constitutionality of a statute is not the champion of any rights except his own.

Henneford v. Silas Mason Co., 300 U. S. 577.

Under California law the court will not consider asserted unconstitutionality of portions of a statute which do not affect the rights of the party raising the question when such portions are separable.

People v. Lewis, 13 Cal. 2d 280.

V.

Appellant Was Given a Fair Trial and Review.

Although the basis for review of this matter was founded upon the repugnancy of the ordinance to the Constitution and the decision rendered in favor of its validity, appellant has mentioned matters relating to procedure and evidence in her attack on the validity of the ordinance.

As heretofore pointed out, at the trial, after introduction of certified copies of the judgments showing two convictions for felonies, appellant stipulated to all the material facts, namely: that she had resided in the City of Los Angeles and had been, and remained there for the period specified by the ordinance and the complaint, and in fact for a seven and one-half year uninterrupted period; that her prior convictions had not been set aside in a manner provided by law at the time of her arrest and that she had not registered with the police department prior to her arrest [R. 17]. Thus, each and every element of the offense charged was clearly shown.

Appellant's offer to testify that she did not know she had a duty to register at or before the time of her arrest was properly excluded for the reason that such evidence was immaterial to the issue.

When the statute plainly forbids an act, and the forbidden act is done by the accused, the law implies conclusively the guilty intent.

People v. McCalla, 63 Cal. App. 783; dismissed in 267 U. S. 585.

Everyone is presumed to know the law, and ignorance thereof is no defense to a charge of crime, though such ignorance must be of law and not of fact.

People v. Flanagan, 65 Cal. App. 268.

So far as pertinent to appellant's argument, Section 20 of the Penal Code of California provides that "in every crime or public offense there must exist a union, or joint operation of act and intent. . . ." This does not mean that a positive, wilful intent to violate the law is an essential ingredient of every offense. Sometimes an act is expressly prohibited by statute, in which case the intentional doing of the act, regardless of good motive or ignorance of its criminal character, constitutes the offense denounced by law. Instances illustrating this principle may be found in statutes enacted for the protection of public morals, public health, and the public peace and safety. If a specific intent is not made an incredient of the statutory offense, it is not necessary to prove such specific intent in order to justify a conviction.

People v. Gory, 28 Cal. 2d 450, 453.

Appellant did testify she had no knowledge that the crime of which she was convicted was punishable as a

felony, etc. [R. 17-18]. This, of course, was before the jury for their consideration and upon which her credibility as a witness depended.

Appellant refers to the case of *People v. Cahan*, 44 Cal. 2d 434, and its holding as to the admissibility of evidence illegally obtained but overlooks the fact that in the present case no evidence was introduced which had been illegally obtained. All of the evidence upon which her conviction was founded was primarily based upon stipulations made by her counsel [R. 17]. Her effort to interject issues of illegal arrest, brutality and violation of civil rights appear only after the trial had been completed and the verdict of the jury returned. These assertions were orally made in connection with a motion in arrest of judgment and by way of an offer of proof [R. 19]. Her offer of proof and motion were properly denied for under California law such a motion is directed only to the sufficiency of the accusatory pleading or jurisdiction of the trial court.

Penal Code, Sec. 1185; (Appendix C)

People v. Odom, 19 Cal. App. 2d 641.

Appellant, in her discussion under the heading "Equal Protection," makes reference to the matter of filing of amended complaints. In answer thereto, appellee cites as authority for such procedure Section 1009 of the Penal Code, set forth in full in Appendix D. There was no contention ever made that the amended complaints in any manner resulted in a change of the original charge or caused appellant to suffer any prejudice to her substantial rights.

It was stated by this Court in *Chaplinsky v. State of New Hampshire*, 315 U. S. 568, that the refusal of the

state court to admit evidence of provocation and evidence bearing on the truth or falsity of the utterances alleged to have been made is open to no constitutional objection; that whether the facts sought to be proved by such evidence constitute a defense to the charge or may be shown in mitigation, are questions for the state court to determine and that this court's function is fulfilled by a determination that the challenged statute, on its face, and as applied does not contravene the Fourteenth Amendment.

The appellant was accorded a fair trial and review.

VI.
Conclusion.

Appellee submits that the ordinance here questioned is a valid, reasonable police regulation enacted to protect the public morals, health, peace, safety and welfare, and does not offend any of the constitutional rights of persons included within its provisions.

The orders and judgment of the Appellate Department of the Superior Court of the County of Los Angeles should be affirmed.

ROGER ARNEBERGH,
City Attorney,
DONALD M. REDWINE,
Assistant City Attorney,
PHILIP E. GREY,
Deputy City Attorney,
Attorneys for Appellee.

APPENDIX A.

Municipal Code of the City of Los Angeles, Secs. 52.38, 52.39, 52.40, 52.41, 52.42.

Section 52.38. *Convicted Person Defined:*

For the purpose of Sections 52.38 to 52.43, inclusive, the words "convicted person" are defined as follows:

(a) Any person who, subsequent to January 1, 1921, has been or hereafter is convicted of an offense punishable as a felony in the State of California, or who has been or who is hereafter convicted of any offense in any place other than the State of California, which offense, if committed in the State of California, would have been punishable as a felony.

(b) Any person who, subsequent to January 1, 1921, has been or hereafter is convicted in the State of California, or elsewhere, of the violation of any law, whether the same is or is not punishable as a felony:

1. Relating to or regulating the possession, distribution, furnishing, or addiction to the unlawful use of any narcotic as defined and referred to in Division 10 of the California Health and Safety Code.

2. Regulating or prohibiting the carrying, possession, or ownership of any concealed weapon, or deadly weapon, or any weapon capable of being concealed, or regulating or prohibiting the possession, sale or use of any device, instrument, or attachment designed or intended to be used for the purpose of silencing the report, or concealing the discharge or flash of any firearm;

3. Regulating or prohibiting the use, possession, manufacture, or compounding of tear gas, or any other gas, which may be used for the purpose of temporarily or permanently disabling any human being.

(c) (Repealed by Ord. No. 106,989, Eff. 3/24/56.)

(d) Any person who has been, since January 1, 1921, or who hereafter is convicted of a crime in the State of California, under the provisions of one or more of the following sections of the Penal Code of California, to wit: 264, 265, 286, 288, 288a, 647a or of Subdivisions 1 or 2 of Section 311 of said Code, or who has been since January 1, 1921, or hereafter is convicted in any place other than the State of California of an offense which, if committed in this state, would have been punishable under one or more of said sections.

1. Any person who has been since January 1, 1945, or who hereafter is convicted of a crime in the State of California under the provisions of Section 647 (5) of the Penal Code of the State of California, or who has been since January 1, 1945, or hereafter is convicted in any place other than the State of California of any offense which, if committed in this State, would have been punishable under said section.

(e) Any person who has been, since January 1, 1921, or hereafter is convicted in the State of California or elsewhere, of any attempt or conspiracy to commit any offense described or referred to in this section.

(f) Provided, however, that any person, except as hereinafter set forth, whose conviction is or has been set aside in a manner provided by law, shall not be deemed a convicted person; provided further, however, that one who

has been convicted of the commission of one or more of the crimes referred to in Subdivision (d) hereof, and whose conviction has been set aside at the termination of probation, and in connection therewith, shall be considered a convicted person, as such term is used in Section 52.38 to Section 52.43, inclusive.

Section 52.39. *Convicts Registration—Information Required:*

(a) It shall be unlawful for any convicted person to be or remain in the City of Los Angeles for a period of more than five day, without, during such five-day period, registering with the Chief of Police in the manner hereinafter prescribed.

(b) Any convicted person who does not reside in the City, but who has a temporary or permanent place of abode outside the City and comes into the City on five occasions or more during any thirty-day period, shall be subject to the provisions of Sections 52.38 to 52.43, inclusive, and shall, on or before entering the City on such fifth occasion, register in the manner prescribed in Subdivision (d) hereof.

(c) Provided, that any person who has once registered with the Chief of Police as a convicted person, shall not be required to register again, except as provided in Section 52.40 of this Code; provided further, however, that any person convicted of any of the crimes enumerated in Subdivision (d) of Section 52.38 of this Code shall register as provided in this section, regardless of whether he has previously so registered as a convicted person by reason of his conviction of some crime other than those enumerated in said Section 52.38 (d).

(d) Every person required by this section to register shall do so by filing with the Chief of Police of the City of Los Angeles a statement in writing, signed by such person, upon a form prescribed and furnished by the Chief of Police, giving the following information:

1. His true name and all aliases which he has used or under which he may have been known;

2. A full and complete description of his person;

3. The kind, character and nature of each crime of which he has been convicted;

4. The place where each of such crimes was committed and the place or places of conviction;

5. The name under which he was convicted in each instance and the date thereof;

6. The name, if any, and the location of each prison, reformatory, jail or other penal institution in which he was confined or to which he was sentenced;

7. The location and address of his residence, stopping place, living quarters or place of abode in the City; if more than one residence, stopping place, or place of abode, that fact must be stated and the location and address of each given;

8. A statement of the kind of residence, stopping place or place of abode in which he resides, whether the same is temporary or permanent, *i. e.*, whether the same is a private residence, hotel, apartment house or other building or structure;

9. The length of time he has occupied each such place of residence, stopping place or place of abode; and the length of time he expects or intends to remain in the City;

10. Such other and further information as may be required by the Chief of Police for the purpose of aiding in carrying into effect the provisions and intent of Sections 52.38 to 52.43, inclusive.

Section 52.40. *Convicts—Change of Residence:*

Any convicted person, except a non-resident, who is required to register under the provisions of Sections 52.38 to 52.43, inclusive, who changes his place of residence, stopping place or living quarters, shall, within 48 hours after such change, and any non-resident mentioned in Section 52.39 (b) who has registered and changes his place of residence, stopping place or living quarters, shall, upon his next entry into the City after such change, notify the Chief of Police of such fact and furnish to such Chief of Police the address of his new residence, stopping place or living quarters in the same manner and with the same detailed information as is required in the filing of the original statement under the provisions of Section 52.39.

Section 52.41. *Convicts, Photographing and Fingerprinting:*

Each convicted person, at the time of registering and furnishing the information required by Sections 52.39 and 52.40, shall be photographed and fingerprinted by the Chief of Police, who shall cause such photographs and fingerprints to be made a part of the record provided for by Sections 52.41 and 52.43.

Section 52.42. *Records Confidential:*

(a) The statements, photographs and fingerprints hereinbefore provided for shall not be open to inspection by the public, or by any person other than a regularly em-

ployed peace or law enforcement officer. Any such photograph, or duplicates thereof, may be exhibited to persons other than police officers of the City for the purpose of assisting in identifying perpetrators of any crime. Copies of said statements, photographs and fingerprints may be transmitted to the sheriff of any county of the State of California, to the head of any organized police department of any municipality in said state, or to the head of any department of the State of California engaged in the enforcement of any criminal law of this state, or to the head of any federal law-enforcement agency, or to any sheriff or chief of police of a municipality, or to the head of any other law-enforcement agency of any state in any state or territory outside the State of California, when request is made in writing by such sheriff or other head of a law-enforcement agency asking for the record of a certain person named therein, or for the record of a person whose photograph or fingerprints reasonably correspond with photographs or fingerprints submitted with such request, and stating that such record is deemed necessary for the use of such law enforcement officer or agency in or concerning the investigation of any crime, or any person who is accused of committing a crime, or any crime which is reported to have been committed, and further stating that the record will be used only for such purpose.

(b) Any police officer or other employee of the Police Department who discloses to any person any information contained in any statement required to be filed under the provisions of Sections 52.38 to 52.43, inclusive, otherwise than in the regular course of his duties, shall be guilty of a misdemeanor.

(c) Nothing contained in Sections 52.38 to 52.43, inclusive, shall prevent the Chief of Police from furnishing to the sheriff of any county, the Chief of Police of any municipality, or the head of any other law-enforcing agency which maintains any system of registration of convicted persons copies of the statements required to be filed under the provisions of Sections 52.38 to 52.43, inclusive, together with photographs and fingerprints of persons making such statements when and if such sheriff, chief of police, or other head of a law-enforcing agency furnishes to the Chief of Police of this City copies of statements, photographs and fingerprints procured by him, and it is hereby made the duty of such Chief of Police to arrange for the exchange of such information.

(d) Any police officer or other employee of the Police Department may, any other provisions herein notwithstanding, furnish to persons other than peace officers, photographs, fingerprints, descriptions and other data relative to persons registered as convicted persons, as defined by Sec. 52.38 (d)-1 of this Code, for the purpose of furnishing the information required by Sec. 41.11.2 of this Code, or for the purpose of securing and effecting the enforcement of said section; and the furnishing of such information, pictures or fingerprints shall be within the regular course of his duties.

APPENDIX B.

Constitution of California, Article XX, Section 10:

"Every person shall be disqualified from holding any office of profit in this State who shall have been convicted of having given or offered a bribe to procure his election or appointment."

Article XX, Section 11:

"Laws shall be made to exclude from office serving on juries, and from the right of suffrage, persons convicted of bribery, perjury, forgery, malfeasance in office, or other high crimes. The privilege of free suffrage shall be supported by laws regulating elections and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice."

Article IV, Section 21:

"No person convicted of the embezzlement or defalcation of the public funds of the United States, or of any state, or of any county or municipality therein, shall ever be eligible to any office of honor, trust, or profit under this State, and the Legislature shall provide, by law, for the punishment of embezzlement or defalcation as a felony."

Section 1021, Government Code:

"A person is disqualified from holding any office upon conviction of designated crimes as specified in the Constitution and laws of the State."

Section 1028, Government Code:

"Any person who has been convicted of a felony in this State or any other state, or who has been convicted of any offense in any other state which would

have been a felony if committed in this State, is disqualified from holding office or being employed as a peace officer of the State, county, city, city and county or other political subdivision, whether with or without compensation, and is disqualified from any office or employment by the State, county, city, city and county or other political subdivision, whether with or without compensation, which confers upon the holder or employee the powers and duties of a peace officer.

"Nothing in this section shall be construed to limit or curtail the power or authority of any board of police commissioners, chief of police, sheriff, mayor, or other appointing authority to appoint, employ, or deputize any person as a peace officer in time of disaster caused by flood, fire, pestilence or similar public calamity, or to exercise any power conferred by law to summon assistance in making arrests or preventing the commission of any criminal offense."

Section 1405, Government Code:

". . . No person shall be appointed a special policeman under this article unless he is a citizen of the United States, of good moral character, and had not been convicted of a felony."

Section 298 Elections Code:

"The county clerk shall also, in the first week of September in each year, examine the records of the courts having jurisdiction in case of infamous crimes and the embezzlement or misappropriation of public money, and shall cancel upon the register the names of all voters appearing thereon who have been finally convicted of an infamous crime or of the embezzlement or misappropriation of public money.

"In counties having a registrar of voters the county clerk of that county shall furnish a copy of such record under the seal of his office to the registrar of voters who shall cancel upon the register the names of all persons appearing in such record.

"As used in this section, 'county clerk' does not include 'registrar of voters'."

Section 209, Elections Code:

"The county clerk shall furnish to the registrar of voters in counties where there is a registrar of voters before the first day of September of each year, a statement showing the names of all persons appearing from the records of courts within his county having jurisdiction thereof, to have been convicted of an infamous crime, or of the embezzlement or misappropriation of public money, during the year prior to the first day of September, and which conviction has become final. The registrar of voters shall thereupon during the first week of September in each year, cancel the affidavits of registration of such persons. The county clerk shall certify the statement under the seal of his office.

"As used in this section 'county clerk' does not include 'registrar of voters'."

Section 92, Civil Code:

"*Divorce, causes.*

"Divorce may be granted for any of the following causes:

One. Adultery.

Two. Extreme cruelty.

Three. Wilful desertion.

Four. Wilful neglect.

Five. Habitual intemperance.

Six. Conviction of a felony.

Seven. Incurable insanity."

Section 199, Code of Civil Procedure:

"a. Trial juror.

A person is not competent to act as a trial juror:

1. Who does not possess the qualifications prescribed by the preceding section;

2. Who has been convicted of malfeasance in office or any felony or other high crimes; or

. . . ."

Section 2051, Code of Civil Procedure:

"A witness may be impeached by the party against whom he was called, by contradictory evidence or by evidence that his general reputation for truth, honesty, or integrity is bad, but not by evidence of particular wrongful acts, except that it may be shown by the examination of the witness, or the record of the judgment, that he had been convicted of a felony unless he has previously received a full and unconditional pardon, based upon a certificate of rehabilitation."

Section 98, Penal Code:

"*Officers to Forfeit and Be Disqualified From Holding Office.*

Every officer convicted of any crime defined in this Chapter, in addition to the punishment prescribed, forfeits his office and is forever disqualified from holding any office in this State."

(Offenses in this Chapter (1)—Bribery and Corruption.)

Section 1072, Penal Code:

"*General Causes of Challenge.*

General causes of challenge are:

1. A conviction for felony;

. . . .

. . . ."

Section 12021, Penal Code:

"Any person who is not a citizen of the United States and any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or who is addicted to the use of any narcotic drug, who owns or has in his possession or under his custody or control any pistol, revolver, or other firearm capable of being concealed upon the person is guilty of a public offense, and shall be punishable by imprisonment in the state prison not exceeding five years, or in a county jail not exceeding one year or by a fine not exceeding five hundred dollars ($500) or by both."

APPENDIX C.

Section 1185, Penal Code:

Motion; definition; defects authorizing motion; time; entry of order

"A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea, finding, or verdict of guilty, or on a finding or verdict against the defendant, on a plea of a former conviction, former acquittal or once in jeopardy. It may be founded on any of the defects in the accusatory pleading mentioned in Section 1004, unless the objection has been waived by a failure to demur, and must be made and determined before the judgment is pronounced. When determined, the order must be immediately entered in the minutes."

APPENDIX D.

Section 1009, Penal Code:

Amendment of accusatory pleading before plea or sustaining of demurrer; subsequent amendments; resubmission or new information; pleadings to amendment; amendments not permitted; verification

"An indictment, accusation or information may be amended by the district attorney, and an amended complaint may be filed by the prosecuting attorney in any inferior court, without leave of court at any time before the defendant pleads or a demurrer to the original pleading is sustained. The court in which an action is pending may order or permit an amendment of an indictment, accusation or information, or the filing of an amended complaint, for any defect or insufficiency, at any stage of the proceedings, or if the defect in an indictment or information be one that cannot be remedied by amendment, may order the case submitted to the same or another grand jury, or a new information to be filed. The defendant shall be required to plead to such amendment or amended pleading forthwith, or, at the time fixed for pleading, if he has not yet pleaded and the trial or other proceeding shall continue as if the pleading had been originally filed as amended, unless the substantial rights of the defendant would be prejudiced thereby, in which event a reasonable postponement, not longer than the ends of justice require, may be granted. An indictment or accusation cannot be amended so as to change the offense charged, nor an information so as to charge an offense not shown by the evidence taken at the preliminary examination. A complaint cannot

be amended to charge an offense not attempted to be charged by the original complaint, except that separate counts may be added which might properly have been joined in the original complaint. The amended complaint must be verified but may be verified by some person other than the one who made oath to the original complaint."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 47

VIRGINIA LAMBERT,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

SUPPLEMENTAL BRIEF OF APPELLEE.

ROGER ARNEBERGH,
City Attorney,
DONALD M. REDWINE,
Assistant City Attorney,
By PHILIP E. GREY,
Deputy City Attorney,
Suite 400 City Hall,
Los Angeles 12, California,
Attorneys for Appellee.

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SUPPLEMENTAL BRIEF OF APPELLEE.

In view of the matters urged and set forth in the Brief of *Amicus Curiae* for Appellant, appellee presents herewith, by way of a reply in part thereto, this supplemental brief.

Argument.

It is inferred that appellant could not have possibly been aware of the provisions of the Los Angeles registration ordinance for the reason that it was published once in the Los Angeles Daily Journal at the time of its enactment (*Amicus Curiae* Br. p. 9). It must be noted that this procedure followed the provisions of the Charter of the City of Los Angeles. Section 31 thereof provides that all ordinances finally adopted under the provisions of the Charter shall be published in the English language by at least one insertion in some daily newspaper printed

and published in the City of Los Angeles. To follow the reasoning advanced by *amicus curiae* it would be necessary to continually publish all ordinances and statutes each day, for each day some person becomes an adult and could not have been charged with notice of the prior passage of such an ordinance even though there had been complete compliance with statutory law in the enactment of such ordinance or statute.

The cases cited by *amicus curiae* in regard to notice by publication do not support the general principle for which they were cited. In *Walker v. Hutchinson City*, 352 U. S. 112, 117, the court held that due process requires that an owner whose property is taken for public use must be given notice and a hearing in determining just compensation; that a newspaper publication alone is not adequate notice under such circumstances. It is further stated therein it is common knowledge that mere newspaper publication rarely informs a landowner of proceedings against his property.

In the case of *Mullane v. Central Hanover Tr. Co.*, 339 U. S. 306, this court's statement as to notice given by a newspaper publication related to proper notice in regard to beneficiaries whose interests were involved.

Neither of these cases requires or limits the publication of statutes or ordinances enacted by a legislative body to provide personal notice to all citizens of the state or community.

Under California law persons are conclusively presumed to know the law. (*Barnett v. Marsili*, 131 Cal. App. 337; *Zeh v. Alameda Community Hotel Corp.*, 122 Cal. App. 366; *People v. Flanagan*, 65 Cal. App. 268.)

In his brief *amicus curiae* has assumed and stated as a proven and established fact that appellant "had no knowl-

edge that her status as an unregistered 'convicted person' was a crime punishable by imprisonment" and "had no knowledge of her duty to register, etc." (Br. of *Amicus Curiae*, pp. 5, 8, 11 and 19.) Appellee caused an inquiry to be made of the Probation Officer of the County of Los Angeles as to the usual procedure followed in cases where a defendant is placed on probation in connection with the "registration laws." The response of the Probation Office is hereto attached as Appendix A. It is noted that the usual practice of that office is to require persons granted probation to comply with any appropriate registration ordinances or statutes. In fact, that practice was made standard procedure under the Department's Manual of Instructions. It is significant to further note in this particular case that the records disclose Mrs. Lambert was advised to register on October 30, 1951. This appears to have been the first interview with the probationer by the Deputy Probation Officer. It thus appears there is no question that the People could have proved as part of their case in chief or in rebuttal of appellant's denial of knowledge of such registration ordinance, that she in fact was given personal notice of the existence of the ordinance and of her duty to register thereunder. The trial court, however, followed what appeared to be state law and ruled that appellant was not entitled to testify as to her knowledge of her duty to register. That fact, if it be a fact, was not established.

Amicus curiae asserts that appellant's experience indicates it is not the uniform policy of the police to give convicted persons an opportunity to register if they fail to do so because of ignorance of the requirement (*Amicus Curiae* Br. p. 11). Attached and marked Appendix B is a communication addressed to the Los Angeles Police

Department from *amicus curiae* and copy of the reply thereto. It would appear from such reply that the policy of the Police Department is in fact contrary to appellant's experience.

It must be further emphasized that the arguments advanced for and on behalf of "first offenders" should have little concern here for the record discloses that appellant had suffered two prior convictions of felonies and therefore does not come within such classification. Also, appellant had not been charged with failure to register for each separate day nor was she ordered to be imprisoned for a period of six months [R. 20].

Amicus curiae has overlooked the provisions of Subsection (f) of Section 52.38, which provide that where the conviction has been set aside in the manner provided by law, that is generally under the probation laws upon a showing of probationer's having complied with the terms of probation, such person is not thereafter considered to be a "convicted person" and need not register. It is thus apparent that this ordinance does consider rehabilitation and does not require "a person who has been convicted any place in the world at any time since 1921 of any offense punishable in California . . . ." to register (*Amicus Curiae* Br. pp. 21, 23, 35, 41).

Much of the argument advanced is based solely on speculation, such as the assertion that "the fact of registration may subject the convicted person to frequent detention and questioning during police roundups of suspects for crime of which he is completely innocent" (*Amicus Curiae* Br. p. 25). This argument assumes lawless action by police officers and overlooks the clear declaration of the law upon the subject of lawful arrest. It has been held that it is not unreasonable for officers to seek interviews

with suspects or witnesses, or to call on them at their homes for such purpose.

People v. Martin, 45 Cal. 2d 755;

People v. Michael, 45 Cal. 2d 751;

People v. Mendoza, 145 Cal. App. 2d 270.

A police officer has a right to make inquiry in a proper manner of anyone upon the public streets at a late hour as to his identification and the occasion of his presence, if the surroundings are such as to indicate to a reasonable man that the public safety demands such identification.

Gisske v. Sanders, 9 Cal. App. 13, 16.

It has been held that there is nothing unreasonable in an officer questioning persons outdoors at night, and when a response to a reasonable inquiry elicited evidence that the person may have been guilty of a crime, the arrest was lawful.

People v. West, 144 Cal. App. 2d 214.

In the case at bar, the inference attempted to be made concerning an illegal arrest was first offered after the trial had been completed and the verdict of the jury returned. It was made in connection with a motion in arrest of judgment [R. 19].

Amicus curiae also asserts that "Under the terms of section 52.42(b), a police officer apparently is free to disclose the registration data if he does so 'in the regular course of his duties.'" (*Amius Curiae* Br. p. 23.) That reference should have been to subsection (d). It is certainly implied that the "regular course of his duties" therein referred to applies to his duties as a police officer and relates to the detection and apprehension of those committing crime.

Another field of speculation appears on page 23 of *Amicus Curiae's* Brief, wherein reference is made to possible leaks or careless disclosure of the information required. This overlooks the confidential character placed upon these records and assumes that those provisions will not be obeyed. The answer to question No. 5, Appendix B, further dispels the likelihood of such event occurring.

The argument advanced and the information contained in the replies from the various countries made by *amicus curiae* are admittedly based upon the common law. Registration statutes are of course purely statutory law and of more recent origin. That may explain the absence of such ordinances in cities having common law jurisdiction. In years gone by when communities were small and the population thereof remained the same, the police were well aware of the presence of persons within their community who were potentially criminally inclined, or who suffered prior conviction, but that situation no longer exists. With the great influx of persons to the larger cities and the rapid means of transportation, it is not now possible to be aware of the presence of all persons deemed to be a potential threat to the community. The figures mentioned in the Brief of *Amicus Curiae* give support to the fact that the legislative body of the City of Los Angeles had a reasonable basis for enacting this ordinance in an effort to add a needed protection to the health, morals, welfare and safety of the public, and that such legislation would be corrective of some specific evil.

It has been stated by this Court that the discretion of the legislature is very large in the exercise of the police power, both in determining what the interests of the public require and what measures and means are reasonably necessary for the protection of such interests; that the constitutionality of such measures is presumed; and

it must also be presumed that the legislature has carefully investigated and determined that the interests of the public require such legislation, and that a state may adopt such measures as is deemed necessary to prevent that which it considers to be evil, and may prohibit acts which are in themselves innocuous in order to effectuate the prohibition of that which is evil.

O'Gorman v. Hartford Fire Ins. Co., 282 U. S. 251;

Purity Extract & T. Co. v. Lynch, 226 U. S. 192.

A law may include a prohibition of innocent acts, and it is not invalid as to matters included therein which are within the police power. Such innocent acts may be prohibited by statutes enacted under the police power when necessary to protect the public peace, safety and welfare.

Smiley v. Kansas, 196 U. S. 447.

In the case of *Murdock v. Pennsylvania*, 319 U. S. 105, this court implied that a registration ordinance could be a proper police regulation. It was there stated: "As we have said, it is not merely a registration ordinance calling for an identification of the solicitors so as to give the authorities some basis for investigating strangers coming into the community."

Conclusion.

The judgment of the court below should be affirmed.

Respectfully submitted,

ROGER ARNEBERGH,
City Attorney,
DONALD M. REDWINE,
Assistant City Attorney,
By PHILIP E. GRAY,
Deputy City Attorney,
Attorneys for Appellee.

APPENDIX A.

COUNTY OF LOS ANGELES
PROBATION OFFICE
Post Office Box 3544 Terminal Annex
Los Angeles 54, California

September 10, 1957

Re: Virginia Lambert—X-51902
Superior Court Nos. 142123, 142412

Mr. Philip E. Grey
Deputy City Attorney
Room 40, City Hall
Los Angeles-12 California.

Dear Mr. Grey:

In response to your request for information regarding Virginia Lambert, we submit the following:

Mrs. Lambert was first known to the Probation Department in August, 1951. She had entered a plea of guilty to one count of forgery of a fictitious name in each of the two Superior Court informations No. 142123 and 142412.

On August 17, 1951 she was sentenced by the Hon. Thomas L. Ambrose, Judge, to the California Institution for Women at Tehachapi on each of the cases, the second sentence to run concurrently. The execution of the sentence was suspended: she was placed on probation for a period of five years on condition that she serve the first 90 days in the custody of the Sheriff; that on her release she secure and maintain suitable employment to the best of her ability; that she maintain residence as approved by the Probation Officer; that she have no further transactions with checks or a checking account or bank checks of any character; that she follow recommendations as might be given by the Probation Officer.

On April 8, 1952 Mrs. Lambert was before the Court for hearing on violation of probation. The matter was continued from time to time and on June 10, 1952 probation as to each case was modified to spend the next six months in the custody of the Sheriff; "that at the expiration of that time she will be subject to allowance for good time, that probation will then be terminated and the case be permitted to expire without dismissal." The six months in the second case was ordered to run concurrently with the six months of the first case.

About February 10, 1955 motion was filed that the plea of guilty in both cases be set aside and the matters dismissed pursuant to Section 1203.4 P.C. This matter was first heard on February 15, 1955, was continued to March 1, 1955 and on that date the Court granted the defendant's motion to set aside the guilty plea and dismissed the two informations.

A review of our records shows that on October 30, 1951 the defendant was given written instructions which embodied the conditions of probation as imposed by the Court on August 17, 1951, and also the usual instructions to probationers. We are enclosing a photocopy of the instructions as given to Mrs. Lambert and as signed by her.

Our records further show the following notation dated October 30, 1951: "Advised to register." In accordance with our practice that indicates that Mrs. Lambert was advised by the Deputy Probation Officer to register with the Los Angeles Police Department in accordance with the City's Registration Ordinance.

For a good many years it has been the practice of the Probation Department to require that persons granted probation comply with any appropriate registration ordinances whether that be registration under Section 290

P.C. since that has been effective; registration under County ordinance or registration under the requirements of Section 52.38 of the Los Angeles Municipal Code. This procedure, which had been in effect for some time at the time Mrs. Lambert was placed on probation in August, 1951, was formalized under the Department's Manual Instructions issued April 1, 1953 and April 10, 1953.

In view of the fact that Mrs. Lambert had been convicted of forgery of a fictitious name, a felony, and was at that time residing in Los Angeles City, the implied reference in the notation of our supervising deputy "Advised to register" was to the requirements of the Los Angeles Municipal Code.

Yours very truly,

HAROLD R. MUNTZ

Harold R. Muntz,

Chief Deputy Probation Officer

ECG ibm

The original communication received from the Probation Department has been filed with the Clerk of this Court.

COUNTY OF LOS ANGELES

PROBATION OFFICE

Los Angeles 12, California

INSTRUCTIONS TO ADULT PROBATIONER

File No. X-51902

Virginia Lambert: On 8-17-51 you were granted probation for a period of five years by the Honorable Thomas L. Ambrose, Judge of the Superior Court, the order of the court being as follows:

California Institution for Women concurrently both cases. Suspended.

Probation for five years.

90 Days County Jail, Good Time.

Secure and maintain suitable employment.

Residence approved by Probation Officer.

No checks or checking account.

Comply orders of the Court and Probation Officer.

ONLY THE COURT HAS THE AUTHORITY TO CHANGE THE ABOVE ORDER.

In addition to the above, you are instructed by the probation officer as follows:

1. To notify the probation officer at once by mail or in person after changing your address.
2. To remain in Los Angeles County unless permitted by the court or probation officer, or ordered by the court, to go elsewhere. Requests to leave the State should be made two months in advance, or at the earliest possible time (See reverse side.)
3. To report to the probation officer in person during the first 10 days of each month (but not on Saturdays,

Sundays or holidays), between the hours of 8:00 a.m. and 4:30 p.m.. However,

If permitted to reside outside Los Angeles County, or ordered by the court to do so, you must report to the probation officer by mail. Reports must be posted by the 5th of each month.

4. To obey all laws.
5. Other directions:

FAILURE TO REPORT IS A VIOLATION OF THE TERMS OF YOUR PROBATION.

You may be returned to the court, or your probation may be revoked in your absence, if the court "shall have reason to believe from the report of the probation officer, or otherwise, that the person so placed on probation is violating any of the conditions of his probation, or engaging in criminal practices, or has become abandoned to improper associates or a vicious life," (1203.2 Penal Code); or if you are convicted of any new offense.

by MARGARET GIBSON
Deputy Probation Officer, Adult Div.

I hereby acknowledge receipt of
a copy of these instructions.

10-30, 1951

VIRGINIA LAMBERT
Probationer.

APPENDIX B.

LAW OFFICES OF
O'MELVENY & MYERS
433 South Spring Street
Los Angeles 13

July
22nd
1957

In Reply Refer to 8608

Captain Stanley Sheldon
Public Information Division
City of Los Angeles
150 North Los Angeles Street
Los Angeles, California

Dear Captain Sheldon:

On July 12th your office was kind enough to send me information concerning the administration of Section 52.38 of the Los Angeles Municipal Code, which requires registration of previously convicted persons. That information indicates that during the year 1956 thirty-nine arrests were made for violation of the ordinance.

I am writing now to enquire whether it would be possible for you to make available to me the names of the persons who were arrested. The purpose of this request is to enable me to examine the proceedings in some or all of these cases. As I mentioned to you on the telephone, my interest in this problem stems from the fact that the Supreme Court invited me to file a brief as a friend of the Court in a case (Lambert v. California) which involves this ordinance.

Your cooperation in connection with my enquiries is very much appreciated.

Sincerely yours,
WARREN M. CHRISTOPHER
Warren M. Christopher.

WMC:kg

The original letter has been filed with the Clerk of this Court.

Number of felons currently registered under ordinance section 52.38.

Answer: 43,313 as of July 10, 1957.

Number of filings on this charge.

Answer: 39 arrests during 1956. In 36 of these, complaints were issued by City Attorney.

Number of convictions on this charge.

Answer: Of the 36 complaints filed, there were 32 convictions. 11 received jail sentences of from 5 to 30 days each. Six of these received fines in addition to jail sentence of $25 to $50 each. 21 received straight probation.

What methods are used to acquaint ex-convicts with the provisions of these ordinances requiring them to register?

Answer: Prior to the time that convicts are released from the state prisons, they are enrolled in a pre-release program which is conducted by the State Department of Corrections. They receive detailed instructions concerning the conditions of their parole and general information regarding their rights, etc. It is during this pre-release schooling that they are advised of the local ordinances pertaining to the registration of ex-felons.

All parolees are required to report to a state Parole Officer immediately upon their arrival at their respective destinations. The parolee is again advised of the necessity for registering as an ex-convict with the local police department in those jurisdictions having a registration ordinance.

w is the information filed in this Department?

swer: Ex-convict registration forms and photos are retained in packages which bear an L. A. Police Department number. The L. A. No. on the package is a permanent number assigned to an individual. This package contains copies of all previous arrest reports, commitments, etc., pertaining to the individual subject.

In addition to the package file a 3x5 Index Card bearing the ex-convict's name and LAPD registration number is kept in a separate index file. The purpose of this file is for cross reference.

Information concerning ex-convict registrations is rigidly controlled and is restricted to use by bona fide law enforcement agencies.

t now or has it ever been the policy to permit felons register, and then release them when there is no er charge upon which to hold them?

swer to 6: Ex-convicts who have failed to register as such are rarely booked on that charge alone. The policy is to allow the subject to register and then release him, except in those cases where a subject is uncooperative and/or is frequenting high crime areas of the city.

During 1956, arrest bookings totaled 225,592, of which but 39 arrests were for violation of the ex-convict registration ordinance.

There is no record of the number of instances where ex-convicts have been

questioned by officers making field interrogations, taken to the Record Division for registering, and later released. Based upon the personal experience of the officers questioned, there have been many times more cases of this type than of actual bookings on this charge.

ADULT ARRESTS—YEAR 1956

CONVICT REGISTRATION ARRESTS ONLY

Name	Date of Arrest
Muto, David	10-23-56
Knight, I.	11-5-56
Duran, M.	9-11-56
Talley, C.	11-21-56
Moore, R.	1-29-56
Briscoe, T.	5-4-56
Kuykendall, H.	11-14-56
Murray, R.	12-8-56
Williams, J.	4-10-56
Soriano, R.	6-23-56
Minnix, R.	7-1-56
Haynes, J.	12-9-56
French, R.	7-1-56
Seals, W.	10-9-56
Bernard, R.	5-26-56
Sides, O.	2-28-56
Belkin, B.	5-7-56
Bluett, L.	1-27-56
Ethridge, A.	3-31-56
Dufalo, L.	2-16-56
Adams, G.	9-29-56
Pines, H.	12-14-56

Name	Date of Arrest
Nieman, H.	11-5-56
Walters, C.	11-28-56
Klein, H.	3-14-56
Sherling, H.	5-22-56
Matthews, Edw.	11-24-56
Washington	3-3-56
Enstrom, H.	6-6-56
Takahashi, A.	1-1-56
Valney, R.	2-7-56
Sanchez, F.	5-26-56
Barkmeier, M.	9-25-56
Parks, T.	12-17-56
Wilson, J.	5-25-56
Crosby, D.	10-6-56
Woodleaf, G.	12-26-56
Summers, W.	6-20-56
Shelton, J.	5-8-56

Office - Supreme Court, U.S.
FILED
OCT 14 1957
JOHN T. FEY, Clerk

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1957

No. 47

VIRGINIA LAMBERT,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

Appeal from the Superior Court of the State of California, in and for the County of Los Angeles.

BRIEF OF ATTORNEY GENERAL OF THE STATE OF CALIFORNIA FOR RESPONDENT.

EDMUND G. BROWN,
Attorney General of the State of California,

CLARENCE A. LINN,
Assistant Attorney General of the State of California,
600 State Building, San Francisco 2, California.

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In the Supreme Court
OF THE
United States

October Term, 1957

No. 47

Virginia Lambert,	*Petitioner,*
vs.	
The People of the State of California,	*Respondent.*

Appeal from the Superior Court of the State of California, in and for the County of Los Angeles.

BRIEF OF ATTORNEY GENERAL OF THE STATE OF CALIFORNIA FOR RESPONDENT.

OPINION BELOW.

The opinion of the Appellate Department of the Superior Court, County of Los Angeles, State of California is unreported. It appears at R. 29-30.

JURISDICTION.

Jurisdiction of this Court is invoked under the provisions of 28 U.S.C. § 1257(2). Appellant was convicted in the Los Angeles Municipal Court of violating § 52.39 of the Los Angeles Municipal Code. (R. 18, 20.) On appeal the Appellate Department of the Superior Court, County of Los Angeles, State of California, affirmed. (R. 30.) That Court is the highest Court of the State of California to which an appeal could be taken in this case. See *Alberts v. California*, 353 U. S. ....., 1 L. Ed. 2d 1498, 1505. The judgment of said Court was entered on March 2, 1956. (R. 31.) Appellant's notice of appeal to this Court was filed on April 13, 1956. (R. 31-32.) This Court noted probable jurisdiction on November 19, 1956. 352 U.S. 914. The case was argued on April 3, 1957. Reargument was ordered on June 3, 1957. 25 U.S. L. Week 3359. The Court invited *amicus curiae* to appear for appellee. 25 U.S. L. Week 3359.

STATUTES INVOLVED.

The text of § 52.38 through § 52.43 of the Los Angeles Municipal Code is set out in an Appendix.

QUESTIONS PRESENTED.

A Los Angeles Municipal Ordinance makes it a misdemeanor for persons previously convicted of specified crimes to remain in the city for more than five days without registering with the Chief of Police.

On appeal from a conviction for failure to register, the questions presented are:

1. Is the decision of the Appellate Department of the Superior Court of the County of Los Angeles correct in holding that it is no defense to a violation of the ordinance that the defendant did not know that she had a duty to register with the Los Angeles police as a convicted felon?

2. Is the decision of the Appellate Department of the Superior Court of the County of Los Angeles correct in holding that the ordinance is a constitutional exercise of the State's police power and not repugnant to the Fourteenth Amendment to the United States Constitution?

STATEMENT OF THE CASE.

On February 2, 1955 appellant Virginia Lambert was arrested in Los Angeles and charged with a violation of § 52.39 of the Los Angeles Municipal Code, a misdemeanor. (R. 15.) That section makes it unlawful for a convicted felon or a person convicted of specified misdemeanors to be or remain in the City of Los Angeles for more than five days without registering with, and furnishing information to, the Chief of Police.

Appellant's trial in Los Angeles Municipal Court for violation of the registration ordinance commenced on April 14, 1955. (R. 2.) As set forth in the Engrossed Statement on Appeal prepared by the parties

and approved by the trial judge (R. 15-21), the evidence at the trial established the following facts: At the time of her arrest, appellant had been a resident of Los Angeles for an uninterrupted seven and one-half year period. (R. 17.) On May 29, 1951 and on June 18, 1951, she had been convicted in the Los Angeles County Superior Court of the crime of forgery, an offense punishable as a felony under California Penal Code §470. (R. 15-16.) At the time of her arrest appellant had not registered with the Chief of Police. (R. 17.)

At her trial for failure to register, appellant asserted that the complaint against her fails to state a cause of action because § 52.39 denies her due process of law and equal protection of the laws guaranteed by the Constitution of the United States. (R. 16.) The Municipal Court rejected this claim of unconstitutionality. (R. 16.) Appellant offered to testify that she did not know that she had a duty to register, but the Municipal Court sustained an objection to this testimony. (R. 17.)

On April 19, 1955, a jury found appellant guilty as charged. (R. 18.) The Court suspended imposition of sentence and placed her on probation for three years on condition that she violate no law dealing with public health, welfare or morals and that she pay $250. (R. 20.)

An appeal was taken to the Appellate Department of the Superior Court, Los Angeles County, State of California. (R. 21.) On the appeal, the constitutional-

ity of § 52.39 of the Municipal Code was again challenged. (R. 20.) On March 2, 1956, the Appellate Department affirmed the Municipal Court. (R. 31.) In its memorandum opinion (R. 30) the appellate Court held that wrongful or criminal intent is not an element of the crime created by the ordinance and that it is no defense that appellant did not know of the registration requirement. The Court also stated, "There is no merit to the claim that the ordinance is unconstitutional."

SUMMARY OF ARGUMENT.

I.

Due process does not require that wrongful intent be an element of all crimes, and in fact this Court has held that certain acts or failures to act may constitutionally be made criminal without regard to the defendant's lack of intention to violate the law. If this were not the accepted rule, much if not all so-called public welfare legislation would be unenforceable.

The purpose of the Los Angeles Ordinance is to protect the community from the criminal conduct of previously convicted felons and of misdemeanants convicted of specified sex offenses. Inasmuch as it is clearly a type of public welfare legislation, designed to cope with the serious problem posed by criminal recidivists and not to punish former convicts, the public interest de-

mands full compliance with its terms. If ignorance of the registration requirement of the ordinance is held to be a valid defense for those subject to its terms, the ordinance will be unenforceable, and a valuable means of protecting the public from the wrongful acts of known criminals will be rendered useless.

II.

The Los Angeles ordinance, far from being unique (see Note, 103 University of Pennsylvania L. Rev. 60, 65) is designed to deter known criminals of recidivistic tendencies from further misconduct and to promote efficient law enforcement in a large, densely populated area which is well known for a substantial number of transient visitors and new residents who flow into the city daily. The registration requirements to which the ordinance subjects specified convicted persons are reasonably calculated, in view of the classification set forth therein, to accomplish its purposes for the protection of the public welfare and safety, and appellant's constitutional rights are in no way infringed thereby.

ARGUMENT.

I.

DUE PROCESS DOES NOT REQUIRE THAT WRONGFUL INTENT BE AN ESSENTIAL ELEMENT OF CRIMINAL LEGISLATION ENACTED UNDER THE POLICE POWER FOR THE PROTECTION OF THE PUBLIC WELFARE AND SAFETY.

Appellant maintains that she did not know nor should she have known of the existence of the registration requirement. The letter, filed with the brief of the City Attorney of Los Angeles upon rehearing of this appeal, from the probation officer for the County of Los Angeles, in the Superior Court of which appellant was twice convicted in 1951, indicates that it is the practice of that office to inform probationers of the Los Angeles registration requirement. Furthermore, as the letter filed herewith from the Department of Corrections indicates, all felons released from California prisons are given actual notice of registration requirements such as those of the ordinance here in question, and are furnished with an explanatory pamphlet relating thereto. Thus a vast majority of persons potentially subject to this ordinance have actual notice of its requirements. Consequently appellant's claims that she neither had access to the ordinance nor was notified of her duty to register by the judge at the time of her original sentence in 1951 or when her probation was modified in 1952 in no way exclude the probability that she in fact had actual notice of her duty to register, although not from the sources she mentions.

But even if her proffered (although excluded) testimony that she did not know of the existence of the

ordinance (R. 17) be accepted at face value, she cannot avail herself of this claim to invalidate her conviction for violation of the ordinance. It is a settled rule that specific criminal intent does not apply to crimes based upon public policy, *People v. Darby*, 114 C.A. 2d 412, 250 P. 2d 743, appeal dismissed 345 U.S. 937; and that when specific intent is not made an ingredient of the statutory offense, then it is not necessary in order to convict to prove a knowing intention to violate the law. *People v. Gory*, 28 C. 2d 450, 170 P. 2d 433. The "intent" referred to in California Penal Code § 20 (printed in Appendix B of Appellant's opening brief, p. 35) is merely an intention to do the act which is in fact unlawful; it is irrelevant whether the doer knows he is acting unlawfully. *People v. Dillon*, 199 C. 1, 248 P. 230. For that reason appellant's knowledge or lack of knowledge of her duty to register is irrelevant here.

Appellant maintains further, relying largely upon *Morissette v. United States*, 342 U.S. 246, that the element of wrongful intent (meaning an intention not to comply with the ordinance despite knowledge of its requirements) cannot constitutionally be eliminated as an ingredient of her offense. The analysis in the *Morissette* case in no way supports her view, inasmuch as the Court there was considering the question of whether the substantive element of wrongful intent may be eliminated from crimes of common law origin, and it concluded that the offense of which Morissette was convicted was such a crime and traditionally entailed a wrongful intent. But with respect to those

so-called public welfare offenses created by statute which have no counterpart in the common law, the Court recognized that a different rule had previously been upheld. *United States v. Balint*, 258 U.S. 250; *United States v. Dotterweich*, 320 U.S. 277. In *United States v. Balint*, 258 U.S. at 252, the Court, pointing out that scienter was a requirement in common law crimes, went on to say that wrongful intent is not an essential element in many of the statutory crimes:

> "Many instances of this are to be found in regulatory measures in the exercise of what is called the police power where the emphasis of the statute is evidently upon achievement of some social betterment rather than the punishment of the crimes as in the case of *mala in se*."

Examples of such regulatory measures involving registration requirements are set forth in Note, 103 University of Pennsylvania L. Rev. 60, 97, notes 193 and 194. As appellant readily concedes (Appellant's opening brief, p. 17), the crime created by the Los Angeles ordinance is not *malum in se*, and it therefore seems clear that the *Balint* rationale applies here.

Appellant contends that whether those subject to such regulatory statutes know or have reason to know of the requirements thereof has some bearing in determining the constitutionality of eliminating the wrongful intent requirement. But this is not the justification for the validity of these statutes, any more than a violation of the early motor vehicle registration and license requirements in the beginning era of automobile travel could be excused by a truthful and justifi-

able claim of ignorance of the statutory requisites. See Sayre, Public Welfare Offenses, 33 Columbia L. Rev. 55, 73. The enactment, by itself, of regulatory legislation, such as statutes requiring lobbyists, foreign agents, etc. to register, ordinarily gives an individual subject to it no actual notice of his obligations thereunder, particularly when the statutory prohibition or requirement has no traditional background of general acceptance.

Thus if the legislature, in an attempt to protect the public safety, sees fit to exclude wrongful intent as defined by appellant as a substantive element of a given crime, the omission must be justified on another ground. As this Court stated in *Utermehle v. Norment*, 197 U.S. 40, 55:

> "We know of no case where mere ignorance of the law, standing alone, constitutes any excuse or defense against its enforcement. It would be impossible to administer the law if ignorance of its provisions were a defense thereto."

It is the difficulty of enforcing and administering such types of public welfare legislation as Sayre lists in his article and the purposes thereof that necessitate the abandonment of wrongful intent as an essential component of the offense. Thus with respect to the Los Angeles registration ordinance, its purpose is not to punish convicted felons and sex offenders; rather it is to protect the public by deterring past offenders from repeating their offenses; and by enabling the city's law enforcement officials effectively to apprehend perpetrators of crimes committed within their

jurisdiction by familiarizing them with the whereabouts and past record of known wrongdoers of recidivistic tendencies. If the failure of those subject to the ordinance to register is to be excused on the ground that they did not know they had such a duty, the socially beneficial purposes of the ordinance are nullified, for few convicted persons would register. One may safely assume that a potential or proven recidivist arrested for failing to register would not hesitate to maintain stoutly that he had no idea he was obliged to do so, if he knew such a claim, approved as "due process," would protect him.

II.

THE LOS ANGELES ORDINANCE IS A VALID POLICE MEASURE REASONABLY RESTRICTED TO THE EVIL WITH WHICH IT ATTEMPTS TO DEAL.

The purpose of the ordinance under attack here is two-fold: first, to deter known criminals from committing future crimes by requiring them to apprise the police of their identity and whereabouts; and second, to enable law enforcement officials both to prevent violations of the law and to apprehend the violators when crimes have been committed. Appellee does not deny that the ordinance subjects convicted felons and misdemeanants convicted of specified sex offenses to the inconvenience of registering with the police if they wish to stay in Los Angeles for more than five days, but this fact alone does not invalidate the ordinance. See *Cantwell v. Connecticut*, 210 U.S. 296. The basic

question is whether the persons subject to the ordinance as a class pose a sufficient danger to the City of Los Angeles to justify the requirement that they register for the protection of the community as a whole; substantive due process requires that there be a relationship between the objective sought to be obtained and the means employed to achieve that end. *Thomas v. Collins*, 323 U.S. 516.

The availab'- statistics dealing with criminal recidivism appear to warrant the classification upon which the ordinance is based. Of the total of male admissions to California state prisons, 84.5 per cent of the men admitted had prior criminal records, and 35.7 per cent of the admissions had one or more prior prison records. 47 Journal of Criminal Law, Criminology and Police Science, No. 1, Frym, "Treatment of Recidivists," p. 3; see also letter from the Director of the Bureau of Criminal Statistics on file herewith. In recent years much attention has been devoted to the problems posed by habitual criminals and multiple offenders. See Senate Resolution No. 74, 73rd Cong., 1st sess., 1933; Note, 103 University of Pennsylvania L. Rev. 60, 65. It is true that the mere fact that a person has been convicted of a felony or a sex offense once, twice or more does not mean for a certainty that he will commit other crimes in the future. And it is equally true that there is a first conviction for each multiple offender. But there is as yet no reliable method of predicting the future behaviour of a person convicted in the past, although some studies have been made indicating a high percentage of relapse. See

Glueck and Glueck, After-Conduct of Discharged Offenders, pp. 21 ff, 64 Yale L. J. 792, 794.

It is an absurdity to maintain that because no certain solution is available to deal with a particular problem, due process forbids society to make any attempt, as rational as the known data permits, to eliminate or minimize that problem. If, on the basis of what information is available, the Legislature sees fit to adopt a measure which in a substantial degree bears a relationship to the prevention of a recognized social evil, the Courts will not interfere on constitutional grounds. "Judicially we must tolerate what personally we may regard as a legislative mistake." *Harisiades v. Shaugnessy,* 342 U.S. 580, 590.

Appellant however maintains that the Los Angeles ordinance fails to set up a classification reasonably suited to its objective. But, given the present incomplete data on the problems of recidivism, the ordinance on its face does in fact attempt to distinguish between convicted persons who are likely to commit crimes in the future and those whose records indicate they have been rehabilitated. § 52.38(f) excepts from the registration requirement persons whose convictions have been set aside by law. California Penal Code § 1203.4, permitting a conviction to be set aside after successful completion of the conditions of probation, is mandatory on the Court, that is, a matter of right for the applicant. *People v. Johnson,* 285 P. 2d 74. In the case of the person who fails successfully to complete the conditions of probation, it may be inferred, without doing violence to the available facts that he is far

from rehabilitated, and there is some likelihood his inability to observe the law is not a one-time phenomenon.

Again, § 52.38(d) and (f) single out for special treatment sex offenders. In recent years the public has recognized that criminals of this type pose special problems in the field of law enforcement. One writer, in Note, 60 Yale L. J. 346, discussing the widespread adoption of sexual psychopath laws, comments:

> "Ordinary penal codes are inadequate to solve the problem of dangerous sex criminals [i.e., those who commit many of the crimes enumerated in the Los Angeles ordinance]. Many such individuals are neither deterred by fear of punishment nor reformed by prison terms."

He states further:

> "Implicit in some sexual psychopath laws is the assumption that sex offenders are a distinct type of highly recidivistic criminal who can be isolated on the basis of personality and who must be given unique penal treatment."

Mention is made of the high recidivism rate in offenses such as exhibitionism and sodomy. 60 Yale L. J. at 355.

Similarly, with respect to narcotics offenders, a repetitive pattern is in most instances involved.

> "Existing methods of narcotics regulation have failed to stem the postwar tide of addiction. . . Narcotics users rarely have criminal records prior to addiction; but after addiction they resort to crime, and money illegally gained goes for drugs."
>
> 62 Yale L. J. 751, 759.

See also U.S. Bureau of Narcotics, Memorandum Regarding Narcotic Drug Clinics, Their History and Hazards 6 (Nov. 22, 1938).

In brief, it is apparent that the Los Angeles ordinance was framed specifically for the purpose of dealing with criminals of particularly recidivistic tendencies, and took into account the possibility that a convicted person could rehabilitate himself by successful completion of the conditions of probation. With respect to convicted felons whose convictions have not been set aside, there is no constitutional objection to treating them as a class to which minor burdens attach. As pointed out in Appellee's Brief on First Hearing, p. 7, the California Supreme Court has, against constitutional objections, upheld statutes depriving felons of certain privileges that the rest of the population might still enjoy. See *People v. James,* 71 Cal. App. 374; *People v. Dunlop,* 102 Cal. App. 2d 314; *In the Matter of the Application of Gevino Rameriz,* 193 Cal. 633. Indeed, this Court in *Patsone v. Pennsylvania,* 232 U.S. 138, held that a classification of aliens as a dangerous element in the community under the police power was valid under the Fourteenth Amendment. Mr. Justice Holmes stated:

> ". . . [A] state may classify with reference to the evil to be prevented, and . . . if the class discriminated against is or reasonably might be considered to define those from whom the evil is to be feared it properly may be picked out. A lack of abstract symmetry does not matter. The question is a practical one dependent upon experience. . . It is not enough to invalidate the law that others may do

> the same thing and go unpunished if as a matter of fact it is found that the danger is characteristic of the class named."

It cannot be denied that a convicted felon traditionally forfeits to some extent the confidence of the rest of society. California Code of Civil Procedure § 2051 (printed, along with other illustrative statutes and constitutional provisions, in Appellee's brief on first hearing, Appendix B, p. 11), permitting a witness to be impeached upon showing that he has been convicted of a felony; § 199, excluding convicted felons from jury service; and California Elections Code § 299, canceling the voting rights of persons convicted of infamous crimes, are apt illustrations of this fact. Such statutes have not been held unconstitutional, and yet the rationale thereof appears far less compelling in terms of the social welfare than that of the ordinance here in question. Appellee suggests that the status of convicted felons, like that of aliens, is such that the legislature may single them out as a class for the protection of society at large. See the discussion of the alien registration laws in *Hines v. Davidowitz*, 312 U.S. 52, 75.

There is no doubt that this ordinance, like the alien laws, is an aid in the enforcement of various statutes applicable to the class required to register, such as California Penal Code § 12021, making it a felony for a convicted felon to carry a concealed weapon, upheld in the *Rameriz* case, *supra*. Appellant, however, contends that the ordinance is improperly used as a

weapon for police harassment of "undesirable" persons. Apart from the fact that no proof of this allegation is properly before the Court, and one may not assume the ordinance has been or is being used improperly, it may be noted in passing that the vagrancy laws (e.g., California Penal Code § 647.5) have traditionally been used as legal justification for police roundups in order to identify, question and fingerprint suspected criminals when a crime has been committed, and are generally held to be constitutional. See Note, Use of Vagrancy-Type Laws for Arrest and Detention of Suspicious Persons, 59 Yale L. J. 1351, 1352, note 5. Indeed, the Los Angeles ordinance is likely to lessen the frequency and length of detention of convicted persons in these circumstances, inasmuch as the police officials already have the relevant information about such individuals who have registered.

Appellant maintains further that certain constitutional rights are infringed by the ordinance, namely, the right against self-incrimination, the right of privacy and the right of a person to move freely within the United States. With respect to the first contention, it is necessary merely to say that the Habitual Criminal Act (California Penal Code § 644) relates only to sentencing after commission of another crime, and the furnishing of information regarding past convictions does not provide data for a future prosecution under that statute. As this Court pointed out in *United States v. Kahriger*, 345 U.S. 22, the guarantee against self-incrimination relates to past acts only and not to future acts that may or may not be committed. In fact,

record-keeping requirements which as a practical matter may furnish material for future prosecution have been upheld as a reasonable means of enforcing regulatory statutes. *Shapiro v. U.S.*, 335 U.S. 1.

As for appellant's contention that her right of privacy is invaded by the ordinance, it is a settled rule of tort law that publicity from a public incident in which a person becomes involved, such as a crime, is no subject for complaint, Restatement, Torts § 867, and that view seems equally applicable here, inasmuch as a prior conviction is a matter of public record, and the registration and disclosure provisions of the ordinance are in no way designed for commercial exploitation of the registrant's past and no such purpose or result has been shown.

Registration statutes invariably to some extent encumber a person's right to move freely within the United States. But so do tax statutes and any number of other obligations arising from the simple fact of being physically present in a particular place. The problem posed in *Edwards v. California*, 314 U.S. 160, is in no way comparable to that here.

CONCLUSION.

The orders and judgment of the Appellate Department of the Superior Court of the County of Los Angeles should be affirmed.

Dated, San Francisco, California,
October 11, 1957.

Respectfully submitted,
EDMUND G. BROWN,
Attorney General of the State of California,
CLARENCE A. LINN,
Assistant Attorney General of the State of California,
Amicus Curiae for Respondent.

(Appendix Follows.)

Appendix

LOS ANGELES MUNICIPAL CODE §§52.38-52.43.

SEC. 52.38. CONVICTED PERSON DEFINED.

For the purpose of Sections 52.38 to 52.43, inclusive, the words "convicted person" are defined as follows:

(a) Any person who, subsequently to January 1, 1921, has been or hereafter is convicted of an offense punishable as a felony in the State of California, or who has been or who is hereafter convicted of any offense in any place other than the State of California, which offense, if committed in the State of California, would have been punishable as a felony.

(b) Any person who, subsequent to January 1, 1921, has been or hereafter is convicted in the State of California, or elsewhere, of the violation of any law, whether the same is or is not punishable as a felony:

1. Relating to or regulating the possession, distribution, furnishing, or addiction to the unlawful use of any narcotic as defined and referred to in Division 10 of the California Health and Safety Code. (Amended by Ord. No. 106,989, Eff. 3/17/56.)

2. Regulating or prohibiting the carrying possession, or ownership of any concealed weapon, or deadly weapon, or any weapon capable of being concealed, or regulating or prohibiting the possession, sale or use of any device, instrument, or attachment designed or intended to be used for the purpose of silencing the report, or concealing the discharge or flash of any firearm;

3. Regulating or prohibiting the use, possession, manufacture, or compounding of tear gas, or any other gas, which may be used for the purpose of temporarily or permanently disabling any human being.

(c) (Repealed by Ord. No. 106,989, Eff. 3/24/56.)

(d) Any person who has been, since January 1, 1921, or who hereafter is convicted of a crime in the State of California under the provisions of one or more of the following sections of the Penal Code of California, to wit: 264 [rape], 265 [abduction for marriage or defilement], 286 [sodomy], 288 [lewd or lascivious acts with child under 14], 288a [oral copulation], subdivision 1 of 647a [vagrancy: annoying or molesting child under 18], or of subdivisions 1 or 2 of 311 [indecent exposure], or who has been, since January 1, 1921, or hereafter is convicted in any place other than the State of California of an offense which, if committed in this State, would have been punishable under one or more of said sections. (Amended by Ord. No. 108,387, Eff. 12/27/56.)

1. Any person who has been since January 1, 1945, or who hereafter is convicted of a crime in the State of California under the provisions of Section 647(5) [vagrancy: lewd or dissolute persons or persons who loiter in or about public toilets in public parks] of the Penal Code of the State of California, or who has been since January 1, 1945, or hereafter is convicted in any place other than the State of California of any offense which, if committed in this State, would have been punishable under said section.

(e) Any person who has been, since January 1, 1921, or hereafter is convicted in the State of California or elsewhere of any attempt or conspiracy to commit any offense described or referred to in this section.

(f) Provided, however, that any person, except as hereinafter set forth, whose conviction is or has been set aside in a manner provided by law, shall not be deemed a convicted person; provided further, however, that one who has been convicted of the commission of one or more of the crimes referred to in Subdivision (d) hereof, and whose conviction has been set aside at the termination of probation, and in connection therewith, shall be considered a convicted person, as such term is used in Section 52.28 [sic] to Section 52.43, inclusive.

SEC. 52.39. CONVICTS REGISTRATION—INFORMATION REQUIRED.

(a) It shall be unlawful for any convicted person to be or remain in the City of Los Angeles for a period of more than five days, without, during such five-day period, registering with the Chief of Police in the manner hereinafter prescribed.

(b) Any convicted person who does not reside in the City, but who has a temporary or permanent place of abode outside the City and comes into the City on five occasions or more during any thirty-day period, shall be subject to the provisions of Sections 52.38 to 52.43, inclusive, and shall, on or before entering the City on such fifth occasion, register in the manner prescribed in Subdivision (d) hereof.

(c) Provided, that any person who has once registered with the Chief of Police as a convicted person, shall not be required to register again, except as provided in Section 52.40 of this Code; provided further, however, that any person convicted of any of the crimes enumerated in Subdivision (d) of Section 52.38 of this Code shall register as provided in this section, regardless of whether he has previously so registered as a convicted person by reason of his conviction of some crime other than those enumerated in said Section 52.38(d).

(d) Every person required by this section to register shall do so by filing with the Chief of Police of the City of Los Angeles a statement in writing, signed by such person, upon a form prescribed and furnished by the Chief of Police, giving the following information:

1. His true name and all aliases which he has used or under which he may have been known;

2. A full and complete description of his person;

3. The kind, character and nature of each crime of which he has been convicted;

4. The place where each of such crimes was committed and the place or places of conviction;

5. The name under which he was convicted in each instance and the date thereof;

6. The name, if any, and the location of each prison, reformatory, jail or other penal institution in which he was confined or to which he was sentenced;

7. The location and address of his residence, stopping place, living quarters or place of abode in the City; if more than one residence, stopping place, or place of abode, that fact must be stated and the location and address of each given;

8. A statement of the kind of residence, stopping place or place of abode in which he resides, whether the same is temporary or permanent, *i.e.*, whether the same is a private residence, hotel, apartment house or other building or structure;

9. The length of time he has occupied each such place of residence, stopping place or place of abode; and the length of time he expects or intends to remain in the City;

10. Such other and further information as may be required by the Chief of Police for the purpose of aiding and assisting in carrying into effect the provisions and intent of Sections 52.38 to 52.43, inclusive.

SEC. 5240. CONVICTS—CHANGE OF RESIDENCE.

Any convicted person, except a non-resident, who is required to register under the provisions of Sections 52.38 to 52.43, inclusive who changes his place or residence, stopping place or living quarters, shall, within 48 hours after such change, and any non-resident mentioned in Section 52.39(b) who has registered and changes his place of residence, stopping place or living quarters, shall, upon his next entry into the City after such change, notify the Chief of Police of such fact and furnish to such Chief of Police the address of his new residence, stopping place or living quarters

in the same manner and with the same detailed information as is required in the filing of the original statement under the provisions of Section 52.39.

SEC. 52.41. CONVICTS, PHOTOGRAPHING AND FINGERPRINTING.

Each convicted person, at the time of registering and furnishing the information required by Sections 52.39 and 52.40 shall be photographed and fingerprinted by the Chief of Police, who shall cause such photographs and fingerprints to be made a part of the record provided for by Sections 52.41 and 52.43.

SEC. 52.42. RECORDS CONFIDENTIAL.

(a) The statements, photographs and fingerprints hereinbefore provided for shall not be open to inspection by the public, or by any person other than a regularly employed peace or law enforcement office [sic]. Any such photograph, or duplicates thereof, may be exhibited to persons other than police officers of the City for the purpose of assisting in identifying perpetrators of any crime. Copies of said statements, photographs and fingerprints may be transmitted to the sheriff of any county of the State of California, to the head of any organized police department of any municipality in said state, or to the head of any department of the State of California engaged in the enforcement of any criminal law of this state, or to the head of any federal law-enforcement agency, or to any sheriff or chief of police of a municipality, or to the head of any other law-enforcement agency of any state in any state or territory outside the State

of California, when request is made in writing by such sheriff or other head of a law-enforcement agency asking for the record of a certain person named therein, or for the record of a person whose photograph or fingerprints reasonably correspond with photographs or fingerprints submitted with such request, and stating that such record is deemed necessary for the use of such law enforcement officer or agency in or concerning the investigation of any crime, or any person who is accused of committing a crime, or any crime which is reported to have been committed, and further stating that the record will be used only for such purpose.

(b) Any police officer or other employee of the Police Department who discloses to any person any information contained in any statement required to be filed under the provisions of Sections 52.38 to 52.43 inclusive, otherwise than in the regular course of his duties, shall be guilty of a misdemeanor.

(c) Nothing contained in Sections 52.38 to 52.43 inclusive, shall prevent the Chief of Police from furnishing to the sheriff of any county, the Chief of Police of any municipality, or the head of any other law-enforcing agency which maintains any system of registration of convicted persons copies of the statements required to be filed under the provisions of Sections 52.38 to 52.43 inclusive, together with photographs and fingerprints of persons making such statements when and if such sheriff, chief of police, or other head of a law-enforcing agency furnishes to the

Chief of Police of this City copies of statements, photographs and fingerprints procured by him, and it is hereby made the duty of such Chief of Police to arrange for the exchange of such information.

(d) Any police officer or other employee of the Police Department may, any other provisions herein notwithstanding, furnish to persons other than peace officers, photographs, fingerprints, descriptions and other data relative to persons registered as convicted persons, as defined by Sec. 52.38(d)-1 of this Code, for the purpose of furnishing the information required by Sec. 41.11.2 of this Code, or for the purpose of securing and effecting the enforcement of said section; and the furnishing of such information, pictures or fingerprints shall be within the regular course of his duties.

SEC. 52.43. FALSE STATEMENTS.

(a) No person required by any provision of Sections 52.38 to 52.42 inclusive, to furnish a statement, shall in such statement give any false or fictitious address or any address other than a true address or intended address, or furnish in the making of any such report any false, untrue or misleading information or statement, relating to any information required by any of the provisions thereof to be made or furnished.

(b) Continuing Offense. The duty to furnish statements when and in the manner provided by Sections 52.38 to 52.42 inclusive, is hereby declared to be a continuing one, and for each day that any person

required under the provisions of Section 52.38 to 52.42 inclusive to furnish a statement fails to do so, such failure shall constitute a separate offense; provided, however, that no person may be convicted more than once on account of violations occurring by reason of failure, on a series of days, to furnish such statements; provided, further, that nothing contained herein shall be deemed a bar to subsequent prosecutions for violations of the provisions of this Code occurring subsequent to a prior conviction or acquittal of a violation thereof.

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No. 47

IN THE

Supreme Court of the United States

October Term, 1957

VIRGINIA LAMBERT, *Appellant*

v.

THE PEOPLE OF THE STATE OF CALIFORNIA.

Appeal From the Superior Court of the State of California in and for the County of Los Angeles.

BRIEF OF AMICUS CURIAE FOR APPELLANT.

WARREN M. CHRISTOPHER,
433 South Spring Street,
Los Angeles 13, California,
Amicus Curiae for Appellant.

RICHARD E. SHERWOOD,
Of Counsel.

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IN THE

Supreme Court of the United States

October Term, 1957

No. 47

VIRGINIA LAMBERT, *Appellant*

v.

THE PEOPLE OF THE STATE OF CALIFORNIA.

Appeal From the Superior Court of the State of California in and for the County of Los Angeles.

BRIEF OF AMICUS CURIAE FOR APPELLANT.

Opinion Below.

The opinion of the Appellate Department of the Superior Court, County of Los Angeles, State of California is unreported. It appears at R. 29-30.

Jurisdiction.

Jurisdiction of this Court is invoked under the provisions of 28 U. S. C. §1257(2). Appellant was convicted in the Los Angeles Municipal Court of violating §52.39 of the Los Angeles Municipal Code [R. 18, 20]. On appeal the Appellate Department of the Superior Court, County of Los Angeles, State of California, affirmed [R. 30]. That court is the highest court of the State of California to which an appeal could be taken

in this case. See *Alberts v. California*, 353 U. S. ....., 1 L. ed. 2d 1498, 1505; *Buck v. California*, 343 U. S. 99, 101, 105; *Carlson v. California*, 310 U. S. 106, 111. The judgment of said court was entered on March 2, 1956 [R. 31]. Appellant's notice of appeal to this Court was filed on April 13, 1956 [R. 31-32]. This Court noted probable jurisdiction on November 19, 1956. 352 U. S. 914. The case was argued on April 3, 1957. Reargument was ordered on June 3, 1957. 25 U. S. L. Week 3359. On June 24, 1957, the Court invited *amicus curiae* to appear for appellant. 25 U. S. L. Week 3383.

Statutes Involved.

The text of §52.38 through §52.43 of the Los Angeles Municipal Code is set out in an Appendix.

Questions Presented.

A Los Angeles municipal ordinance makes it a crime punishable by imprisonment for a "convicted person" to be or remain in the city for more than five days without registering with the Chief of Police and supplying detailed information to him. On appeal from a conviction for failure to register, the questions presented are:

1. Does conviction under the ordinance in the absence of wrongful intent violate due process of law?

2. Does the ordinance constitute an unwarranted invasion of the right of privacy, right to liberty, and privileges and immunities of a citizen of the United States in that it (a) purports to make unlawful a morally innocent and passive status and (b) is not reasonably restricted to the evil with which it purports to deal?

Statement.

On February 2, 1955, appellant Virginia Lambert was arrested in Los Angeles and charged with a violation of §52.39 of the Los Angeles Municipal Code, a misdemeanor [R. 15]. That section makes it unlawful for a convicted person to be or remain in the City of Los Angeles for more than five days without registering with, and furnishing information to, the Chief of Police. A "convicted person" is defined in §52.38 of the Municipal Code to include any person who has been convicted of an offense punishable as a felony in California subsequent to January 1, 1921.

Appellant's trial in Los Angeles Municipal Court for violation of the registration ordinance commenced on April 14, 1955 [R. 2]. As set forth in the Engrossed Statement on Appeal prepared by the parties and approved by the trial judge [R. 15-21], the evidence at the trial established the following facts: At the time of her arrest, appellant had been a resident of Los Angeles for an uninterrupted seven and one-half year period [R. 17]. On May 29, 1951, and on June 18, 1951, she had been convicted in the Los Angeles County Superior Court of the crime of forgery, an offense punishable as a felony under §470 of the California Penal Code [R. 15-16].* At the time of her arrest, appellant had not registered with the Chief of Police [R. 17].

At her trial for failure to register, appellant asserted that the complaint against her fails to state a cause of

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*Appellant's forgery convictions stemmed from related transactions, and the sentences, which were both imposed on August 17, 1951, were ordered to run concurrently.

action because §52.39 denies her due process of law and equal protection of the laws guaranteed by the Constitution of the United States [R. 16]. The Municipal Court rejected this claim of unconstitutionality [R. 16]. Appellant offered to testify that she did not know that she had a duty to register, but the Municipal Court sustained an objection to this testimony [R. 17].

On April 19, 1955, a jury found appellant guilty as charged [R. 18]. The court suspended imposition of sentence and placed her on probation for three years on condition that she violate no law dealing with public health, welfare or morals and that she pay $250 [R. 20].

Appellant moved for arrest of judgment and a new trial on the ground, among others, that §52.39 is contrary to the Federal Constitution [R. 19-20]. In support of the motion for arrest of judgment, appellant offered to testify as follows [R. 19-20]: She was arrested on a street corner by two officers who began to search her without giving any reason for her arrest or detention. She was taken to a police station and searched and interrogated for two hours. When the investigation failed to show that she was engaged in any other present criminal conduct, she was charged with failure to register under §52.39 of the Municipal Code [R. 19-20]. The Municipal Court refused this proffer of evidence and denied the motion for arrest of judgment and new trial [R. 20].

An appeal was taken to the Appellate Department of the Superior Court, Los Angeles County, State of California [R. 21]. On the appeal, the constitutionality of §52.39 of the Municipal Code was again challenged [R. 20]. On March 2, 1956, the Appellate Department

affirmed the Municipal Court [R. 31]. In its memorandum opinion, the appellate court held that wrongful or criminal intent is not an element of the crime created by the ordinance and that it is no defense that appellant did not know of the registration requirement [R. 30]. The court also stated, "There is no merit to the claim that the ordinance is unconstitutional" [R. 30].

Summary of Argument.

I.

A. The Los Angeles ordinance makes it a crime punishable by imprisonment for an unregistered convicted person "to be or remain" in the city for more than five days. Appellant neither knew nor should have known of the existence of the ordinance making her status a crime. Los Angeles has taken none of the obvious steps to publicize the registration requirements. Because the status penalized by the ordinance was morally innocent, appellant did not have the warning or notice provided by a sense of wrongdoing that usually attends legally punishable conduct. Moreover, since her status was also entirely passive, she had no reason for inquiring as to the possible existence of applicable regulatory statutes.

B. In these circumstances, appellant's conviction under the Los Angeles ordinance in the absence of wrongful intent violates due process of law. The comprehensive opinion in *Morissette v. United States*, 342 U. S. 246, indicates that except in a limited class of cases referred to as "public welfare offenses," due process requires that wrongful intent be an element of every crime. The few cases in which this Court has sustained convictions under statutes which do not require wrongful intent are readily distinguishable from the present case on one or more

of the following grounds: (1) the person convicted either knew or should have known that his active conduct was unlawful or at least subject to regulation; (2) the offense was not punishable by imprisonment; (3) the conduct involved was objectively immoral.

II.

A. To require registration by a person who has been convicted any place in the world at any time since 1921 of a crime punishable as a felony in California or of certain other crimes invades constitutionally-protected rights. The right of privacy is significantly compromised by forcing the convicted person to be photographed and fingerprinted and to give extensive personal data to the police who may put the photograph in a rogues' gallery and disseminate the information in the course of their duties. The right of liberty is infringed not only by the registration process itself but also by such consequences of registration as detention in police roundups and curtailment of the person's right to live and work where he will. The ordinance also infringes a privilege and immunity of United States citizenship by burdening the right to move freely within the United States.

B. Appellant's status as an unregistered convicted person does not justify the invasions of constitutional rights outlined above. The dictum in *City of New York v. Miln*, 11 Pet. 102, that a state can take "precautionary measures against the moral pestilence of paupers, vagabonds, and possibly convicts" was thoroughly discredited in *Edwards v. California*, 314 U. S. 160. The status of being an unregistered convicted person can no more be the basis for restrictive laws than can the status of indigence or race. In every case in which this Court has

upheld a registration statute, the requirement was imposed on persons engaged in an occupation or other active conduct which was properly subject to regulation. To our knowledge, no city in any common law country requires registration of convicted persons.

C. As in *Butler v. Michigan*, 352 U. S. 380, the legislation here is not reasonably restricted to the evil with which it purports to deal. Appellee states that the ordinance is "directed at the evil of professionalism in crime." In fact, however, its dragnet is undiscriminating. It includes first offenders and probationers despite the fact that they are sharply distinguishable from "professional criminals" and bear a close behaviorial resemblance to the population at large in terms of the only significant yardstick—the likelihood of subsequent criminal behavior. Likewise, the ordinance includes all persons convicted since 1921, without regard for the fact that persons whose convictions are followed by substantial periods of lawful behavior are highly unlikely to commit crime again and cannot logically or properly be grouped with professional criminals. The narrowly-drawn laws of those foreign countries which require certain habitual offenders to notify the police of their addresses pinpoint the unjustifiably broad sweep of the Los Angeles ordinance.

ARGUMENT.

I.

Conviction Under the Ordinance in the Absence of Wrongful Intent Violates Due Process of Law.

The Los Angeles ordinance makes it a crime for a "convicted person" to be or remain in the city for more than five days without registering with the Chief of Police. §52.39.* Appellant was convicted of this crime without proof of wrongful or criminal intent. As a foundation for showing that conviction in the absence of wrongful intent violates due process, we turn first to consider appellant's lack of knowledge that her status as an unregistered convicted person was unlawful.

A. Appellant Neither Knew nor Should Have Known of the Existence of the Ordinance Making Her Innocent and Passive Status a Crime.

The record indicates that appellant had no knowledge that her status as an unregistered "convicted person" was a crime punishable by imprisonment.** At her trial she offered to testify that she did not know at or before the time of her arrest that she was under a duty to register with the Chief of Police [R. 17]. The court, however, sustained an objection to this testimony [R. 17]. On appeal, the court below upheld this exclusion of evi-

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*A "convicted person" is comprehensively defined by §52.38 of the Los Angeles Municipal Code to include anyone who has been convicted any place in the world since 1921 of any crime punishable in California as a felony or of certain other crimes.

**Section 11.00(m) of the Los Angeles Municipal Code provides that failure to comply with any of the mandatory requirements of the code is punishable by a fine of not more than $500, or by imprisonment in the city jail for not more than six months, or both. Each day's violation is a separate offense.

dence, stating that lack of knowledge is no defense [R. 30].

It would have been extraordinary indeed if appellant had known or even suspected that she was subject to fine and imprisonment unless she registered with the Chief of Police. The original version of the Los Angeles ordinance was enacted on September 12, 1933. On April 10, 1936, that version was repealed and the City Council adopted a substitute ordinance which, as amended, is now in effect. In accordance with the requirements of §31 of the Los Angeles City Charter, the 1933 version of the ordinance and the 1936 substitute were published once at the time of their enactment in the Los Angeles Daily Journal, a legal newspaper with a current circulation of approximately 4,000.* This Court has frequently acknowledged the ineffectiveness of notice by publication under ordinary circumstances.** Here, there are the added circumstances that appellant was but nine year old in 1936 and that she did not come to Los Angeles until 1947 [R. 17].

At the time appellant was sentenced for forgery on August 17, 1951, and when her probation was modified on June 10, 1952, she was not, judging from the transcripts of those proceedings, notified by the judge of her

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*Los Angeles Daily Journal, September 13, 1933, p. 10; *Id.*, April 14, 1936, p. 14. Subsequent amendments have not entailed republication of the ordinance.

**"In too many instances notice by publication is no notice at all." *Walker v. Hutchinson City*, 352 U. S. 112, 117. "Chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper, and if he makes his home outside the area of the newspaper's normal circulation the odds that the information will never reach him are large indeed." *Mullane v. Central Hanover Tr. Co.*, 339 U. S. 306, 315.

duty to register.* Between the time of her convictions in 1951 and her arrest in 1955—the period during which appellant was under a theoretical duty to register—the registration ordinance was almost inaccessible. The most recent edition of the Los Angeles Municipal Code containing the ordinance had been published in 1946.** After 1946, only by asking the informal advice of the ordinance clerk could appellant have determined whether the registration ordinance was still in effect or had been repealed or amended.

Los Angeles has taken none of the obvious steps to bring the registration requirement to the attention of convicted persons. The ordinance does not require that the authorities in charge of the jails in Los Angeles notify convicted persons of their duty to register upon their release.*** Nor does the ordinance provide for publicizing the registration requirement, and city officials apparently make no effort to do so.**** Moreover, appel-

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*Certified copies of transcripts of those proceedings (Nos. 142412 and 142123, Los Angeles County Superior Court) have been filed with the Clerk of this Court.

**The 1956 Directory of Los Angeles Attorneys (published by Parker & Son, Inc.) carries an advertisement following p. 286 which states, "At Last! A new edition of the Los Angeles Municipal Code—First printing since 1946."

***To be contrasted are the careful provisions of California Penal Code §290 which require courts, prisons, and other institutions in California to give sex offenders notice of their duty to register under that section. Prison officials and probation officers may in some cases provide information concerning municipal registration ordinances, see Note, 103 U. of Pa. L. Rev. 60, 82-84 (1954), but there is no evidence that appellant received any warning of her duty to register from such sources.

****To be compared are the extensive efforts of the federal government to publicize the requirements of the Alien Registration Act, 66 Stat. 224 (1952), 8 U. S. C. §1302, by notices in post offices and other public places and by radio announcements.

lant's experience [R. 20] indicates that it is not the uniform policy of the police to give convicted persons an opportunity to register if they fail to do so because of ignorance of the requirement.*

A vital factor remains to be mentioned. The Los Angeles ordinance outlaws not conduct or an activity but the wholly passive status of being an unregistered convicted person in Los Angeles. In addition to being passive, the status penalized is morally innocent and has, to borrow Judge Learned Hand's phrase, "no ethical significance." *United States v. Dennis,* 183 F. 2d 201, 215 (2d Cir., 1950). As in the case of possession of agricultural land by a person ineligible for citizenship, *Morrison v. California,* 291 U. S. 82, 90, there is "not even a hint of criminality" for an unregistered convicted person "to be and remain" in Los Angeles for five days.

Thus, not only did appellant have no knowledge of her duty to register, but the nature of the crime created by the ordinance prevented her from having any inkling that she was subject to legal sanctions. Because the status penalized by the ordinance was morally innocent, appellant did not have that warning or notice provided by a sense of wrongdoing which usually attends legally punishable conduct. Moreover, because her status was entirely passive, she—unlike a person actively engaged in a business or occupation—had no reason for inquiring as to the possible existence of applicable regulatory statutes. In short, the effect of appellant's lack of knowl-

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*The net effect is reminiscent of Caligula's Rome where the laws were written in fine print and hung up on pillars too high for the people to read. 1 Blackstone's Comm. *46; see Bentham, The Limits of Jurisprudence Defined 155, 282 (Everett ed. 1945).

edge of her duty to register is seriously aggravated by the fact that neither her status nor her conduct provided any "built-in" notice that she was committing a crime punishable by imprisonment.

B. Due Process Requires Proof of Wrongful Intent for Conviction of the Crime Created by the Ordinance.

The court below held that the elements of the crime created by the ordinance do not include wrongful or criminal intent [R. 30]. In accordance with that holding, the court below rejected the defense that appellant did not know that she had to register [R. 30]. The trial court was of the same view. The Engrossed Statement on Appeal shows that the trial court refused appellant's requested instruction on intent and "instructed the jury that defendant was guilty if she knew, at the time of her failure to register with the Chief of Police as charged, that she had been found 'guilty of a crime punishable as a felony,' that forgery is a crime punishable as a felony, and that ignorance of the law requiring Registration is no excuse" [R. 18].* Thus, appellant was convicted of a crime punishable by imprisonment in the absence of any showing of wrongful intent.

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*Although the Engrossed Statement on Appeal presumably is conclusive in this Court, the record indicates that while one instruction [No. IV] on intent requested by appellant was "Refused" [R. 14], another such instruction [No. II] was "Given as Modified" [R. 10-11]. Even if it is assumed, however, that instruction No. II was given as set forth at page 11 of the record, the other instructions of the trial court, and the holding of the court below that wrongful intent is not required, dissipated the effect of any such instruction, and effectively eliminated the element of wrongful intent. Moreover, if wrongful intent to violate the ordinance had been regarded by the courts below as an element of the crime, it would have been an error of constitutional proportions to refuse to permit appellant to testify that she did not know of her duty to register [R. 17].

The element of wrongful intent cannot, we submit, constitutionally be eliminated under the circumstances of this case.* When (1) an ordinance makes unlawful a morally innocent and passive status, (2) the accused neither knew nor should have known that her status had been made unlawful by the ordinance, and (3) the crime created is punishable by imprisonment—in such a case, due process requires that a wrongful intent be proved. A review of the pertinent decisions of this Court will make this clear.

In *Morissette v. United States*, 342 U. S. 246, the Court comprehensively canvassed the necessity for wrongful or criminal intent as an element of crimes. The Court began with a résumé of the historical background, commenting that the requirement of wrongful intent is "no provincial or transient notion." 342 U. S. at 250. Tracing the "unqualified acceptance" of the requirement by English common law in the Eighteenth Century and its early pronouncement by Nineteenth Century commentators, the Court stressed that the concept took "deep and early root in American soil." 342 U. S. at 250-252.

The opinion in *Morissette* recognized, however, that the Court has reluctantly approved the elimination of intent in a narrow category of offenses. The Court em-

*Wrongful intent, as used in this brief in connection with the Los Angeles ordinance, refers to an intention not to comply with the ordinance despite knowledge of its requirements. With regard to an offense involving acts which are harmful to others or objectively immoral, a person may have wrongful intent without knowledge of a statute making the acts unlawful. But, with respect to such crimes as that created by the Los Angeles ordinance, "knowledge that the relevant conduct is legally forbidden is an essential element of its immorality", and such knowledge is a prerequisite to the existence of wrongful intent. See Hall, General Principles of Criminal Law, 373-374 (1947).

phasized that the elimination of intent in those limited circumstances has been justified by such factors as the assumption of responsibility involved in affirmative conduct and the lightness of the penalties—factors which are not present with respect to the offense created by the Los Angeles ordinance:

> ". . . The accused, if he does not will the violation, usually is in a position to prevent it with no more care than society might reasonably expect and no more exertion than it might reasonably exact from one who assumed his responsibilities. Also, penalties commonly are relatively small, and conviction does no grave damage to an offender's reputation. Under such considerations, courts have turned to construing statutes and regulations which make no mention of intent as dispensing with it and holding that the guilty act alone makes out the crime. This has not, however, been without expressions of misgiving." 342 U. S. at 256.

The Court then indicated that careful analysis is required to determine whether wrongful intent can be eliminated as an element of a particular crime:

> "Neither this Court nor, so far as we are aware, any other has undertaken to delineate a precise line or set forth comprehensive criteria for distinguishing between crimes that require a mental element and crimes that do not. We attempt no closed definition, for the law on the subject is neither settled nor static." 342 U. S. at 260.

Turning to the specific question presented by Morissette's conviction, the Court held that criminal intent is an essential element of the offense under 18 U. S. C. §641 prohibiting conversion of government property.

It is clear that, except in a limited class of cases, the requirement of wrongful intent as an element of crimes is essential to due process. The historical materials set forth in *Morissette* establish that such a requirement is "so rooted in the traditions and conscience of our people as to be ranked as fundamental." See *Rochin v. California,* 342 U. S. 165, 169; *Snyder v. Massachusetts,* 291 U. S. 97, 105.* Accordingly, the question here is whether the crime created by the ordinance falls into that "limited class of offenses" as to which criminal intent can be eliminated as an element. *Morissette v. United States,* 342 U. S. at 258, 260. Examination of the principal cases in which the Court has upheld criminal statutes dispensing with wrongful intent will demonstrate that the registration ordinance does not properly fall within the "limited class."

The foundation case is *Shevlin-Carpenter Co. v. Minnesota,* 218 U. S. 57, where the Court considered the constitutionality of a Minnesota statute prohibiting the cutting and removal of timber on state lands without regard to intent. The Court rejected an argument that "elimination of intent as an element of an offense is contrary to the requirements of due process of law." (*Id.* at 67.) However, three significant factors—none of which is present in the instant case—served to support the propriety of dispensing with wrongful intent in *Shevlin-Carpenter:* (i) the only penalty involved was double-damages, the Court holding that a provision of the Minnesota statute for imprisonment was separable and

*In *Felton v. United States,* 96 U. S. 699, 703, the Court stressed that the law "is not so unreasonable as to attach culpability, and consequently to impose punishment, where there is no intention to evade its provisions."

reserving the question of a subsequent prosecution under that portion of the statute (*Id.* at 66-67);* (ii) the Court indicated that Shevlin-Carpenter should have known that its conduct was unlawful, emphasizing that the company "knew the limitations" of its permit to cut timber on state land and that "they took it at the risk and consequences of transgression" (*Id.* at 69); (iii) the Court stressed that Shevlin-Carpenter's trespass was "a legal wrong, not an innocent act" (*Ibid*).**

United States v. Balint, 258 U. S. 250 and *United States v. Behrman*, 258 U. S. 280, which were in effect limited to their particular facts in *Morissette*, 342 U. S. at 260, involved prosecutions under Section 2 of the Narcotic Drug Act of December 17, 1914, a provision making an unauthorized sale of narcotics a crime without regard to wrongful intent. Those cases are distinguishable from the instant case in that the defendants there were actively dealing in a highly dangerous, habit-forming drug. For that reason they should have known or at least suspected that their handling of narcotics was subject to regulation. The sale of narcotics has long had

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*In sustaining the power of the State of New York to impose "moderate" fines for unintended violations of regulations prescribed by the state's labor law, Judge Cardozo speaking for the New York Court of Appeals carefully added, "we are not to be understood as sustaining to a like length the power to imprison." *People v. Sheffield Farms-Slawson-Decker Co.*, 225 N. Y. 25, 32-33, 121 N. E. 474, 477 (1918). See also *Morissette v. United States*, 342 U. S. at 256.

**The *Shevlin-Carpenter* case was accepted without question as authority for dispensing with wrongful intent in *United States v. Balint*, 258 U. S. 250, but it may be significant that *Shevlin-Carpenter* is not even mentioned in *Morissette*.

overtones of immorality which also should have served as a warning to the defendants in those cases.*

In *United States v. Dotterweich*, 320 U. S. 277, the Court sustained a conviction under sections of the Federal Food, Drug, and Cosmetic Act which make interstate shipment of misbranded or adulterated drugs a misdemeanor without regard to intent. However, the defendant in that case (unlike appellant in the case at bar) was actively engaged in a business which he either knew or should have known was subject to stringent regulation. Thus, in each of the foregoing decisions of this Court, the elimination of wrongful intent was justified by significant factors not present in the instant case.**

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*The Court in the *Balint* case suggests that the collection of taxes may require the elimination of intent in crimes against the revenues. 258 U. S. at 252. Our statutes, however, make wilfulness an element of crimes relating to tax evasion and false returns. 1954 Int. Rev. Code §§7201-7207; see *Spies v. United States*, 317 U. S. 492. Moreover, the abandonment of intent as an element of offenses against the revenues might be justified on the theory that residents of the United States should know of their duty to file returns and pay their taxes in view of the widespread publicity given that duty.

**The necessity of wrongful intent was not an issue in any of the cases cited by appellee in which this Court has upheld statutes requiring registration of particular groups (Br. on first argument, 9-15). Important federal statutes requiring registration make criminal intent or wilfullness an element of the crime. *E. g.*, Universal Military Training and Service Act, 62 Stat. 622 (1948), 50 U. S. C. App. §462; Alien Registration Act, 66 Stat. 225 (1952), 8 U. S. C. §1306 ("Any alien required to apply for registration . . . who wilfully fails or refuses to make such application"); Similarly, under the federal census statutes, only a person who "refuses or wilfully neglects" to answer questions submitted to him is subject to punishment. 68 Stat. 1023 (1954), 13 U. S. C. §221: Punishment of lobbyists, bookmakers, foreign agents and the like for failure to register without regard to wrongful intent might be constitutionally justified on the ground that they are engaged in active conduct which they know or should know is likely to be subject to regulation.

Inroads on the necessity for wrongful intent have also been made in cases where criminal responsibility is imposed for negligence or for "culpable" or "wanton" negligence. See *e. g. People v. Costa*, 40 Cal. 2d 160, 252 P. 2d 1 (1953); *Commonwealth v. Welansky*, 316 Mass. 383, 55 N. E. 2d 902 (1944). Punishment of these offenses of negligence, however, is consistent with the analysis made here, for, by definition, the negligent person—and *a fortiori* the wantonly negligent person—knows or should know that his conduct creates an unreasonable risk to others. See Perkins, A Rationale of Mens Rea, 52 Harv. L. Rev. 905, 913-915 (1939); Restatement of Torts §§282, 284, 289.

The category of crimes in which the element of wrongful intent may be eliminated has often been referred to by this Court and other as "public welfare offenses."* The phrase appears to have been coined in the widely-cited article, Sayre, Public Welfare Offenses, 33 Col. L. Rev. 55 (1933). Based on a study of a half-century of decisions, Sayre divides the offenses punishable without wrongful intent into the following groups:

(1) Illegal sales of intoxicating liquor;
(2) Sales of impure or adulterated food or drugs;
(3) Sales of misbranded articles;
(4) Violations of anti-narcotic acts;
(5) Criminal nuisances;
(6) Violations of traffic regulations;
(7) Violations of motor-vehicle laws;
(8) Violations of general police regulations, passed for the safety, health or well-being of the community. (*Id.* at 73.)

Morissette v. United States, 342 U. S. at 255; Note, 66 Harv. L. Rev. 130 (1952).

On the basis of Sayre's analysis, the offense created by the Los Angeles ordinance would not be punishable in the absence of wrongful intent. Failure to register falls into none of Sayre's categories of offenses punishable without wrongful intent.* When the offense is punishable by imprisonment, Sayre concludes that "the individual interest of the defendant weighs too heavily to allow conviction without proof of a guilty mind" (*Id.* at 72). Moreover, Sayre stresses that, "The group of offenses punishable without proof of any criminal intent must be sharply limited," for "The sense of justice of the community will not tolerate the infliction of punishment which is substantial upon those innocent of intentional or negligent wrongdoing . . . ." (*Id.* at 70).**

In sum, the nature of the offense and the circumstances surrounding appellant's failure to register show that wrongful intent cannot constitutionally be eliminated as an element of the crime created by the ordinance. Failure to register for but a single day is punishable by six months' imprisonment in addition to a fine, and each day's failure constitutes a separate offense. Appellant neither knew nor should have known of the existence of the registration requirement. The status which the ordinance makes criminal is morally innocent and passive and hence does not contain the built-in notice ordinarily accompanying wrongful or active conduct. Conviction in

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*The cases cited by Sayre in support of the omnibus category number 8 do not include any offenses even remotely analogous to that created by the ordinance. See 33 Col. L. Rev. at 87-88.

**Hall, General Principles of Criminal Law 279-322 (1947), levies stern criticism on the imposition of criminal responsibility without wrongful intent or fault, and suggests that the constitutionality of eliminating wrongful intent as an element even of the public welfare offenses should be re-examined. See also Allen, Book Review, 66 Yale L. J. 1120 (1957); Mueller, Mens Rea and the Law Without It, 58 W. Va. L. Rev. 34 (1955).

these circumstances in the absence of wrongful intent is hostile to due process of law.*

A holding that wrongful intent is an essential element of the crime created by the ordinance would neither unsettle the law nor hamper proper law enforcement. The great bulk of crimes already require proof of criminal intent. The traditional "public welfare offenses" would still be punishable. The requirement of wrongful intent need be held applicable only in the unusual situation presented by this case in which an ordinance or law makes punishable by imprisonment a morally innocent and passive status which the person involved neither knew nor should have known had been made unlawful.**

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*Since convicted persons are often not aware of their duty to register, the ordinance is susceptible of being used by the police to harass persons who are regarded as "undesirable." Although the statements attributed to former Los Angeles Chief of Police James Davis in Note, 103 U. of Pa. L. Rev. 60, 63 n. 17 (1954), suggest that there may have been selective harassment under the ordinance, the record here does not contain the evidence of systematic or intentional discrimination necessary to support such a charge. See *Edelman v. California*, 344 U. S. 357, 359. However, if intent were held to be a necessary element of the crime, the possibilities of unfair harassment would be drastically reduced if not totally eliminated.

**Subsequent to the final decision below, the California Supreme Court held that wrongful intent is an essential element of the crime of bigamy even though the state statute is silent on the matter. *People v. Vogel*, 46 Cal. 2d 798, 299 P. 2d 850 (1956). In the *Vogel* case, the California Supreme Court relied on §20 of the California Penal Code which provides that "In every crime or public offense there must exist a union, or joint operation of act and intent, or criminal negligence." In the instant case, the trial court refused to give an instruction quoting this Penal Code section [R. 14], and the point was preserved on appeal [R. 20]. Moreover, the Los Angeles ordinance excludes wrongful intent neither expressly nor by necessary implication, and under the rule stated in *Vogel*, 46 Cal. 2d at 801, such intent would be an indispensable element of the crime of failing to register. Thus, while there may be distinctions between *Vogel* and the case at bar, see 44 Cal. 2d at 801, n. 2 and 804, the Court may wish to remand this case for consideration in light of *Vogel*. *Cf. Musser v. Utah*, 333 U. S. 95.

II.

The Ordinance Is an Unwarranted Invasion of the Right of Privacy, Right to Liberty, and Privileges and Immunities of a Citizen of the United States in That It Penalizes a Morally Innocent and Passive Status and Is Not Reasonably Restricted to the Evil With Which It Purports to Deal.

A. Constitutionally-Protected Rights Are Invaded by the Ordinance.

For a person who has been convicted any place in the world at any time since 1921 of any offense punishable in California as a felony as well as of certain other crimes, arrival in Los Angeles is marred by an onerous requirement. Within five days, he is required to register with the Chief of Police and to furnish information ranging from a full description of his person to a statement of the kind of residence in which he is living. §52.39(a),(d). At time of registration, his photograph and fingerprints will be taken. §52.41. And if he should move to another place in the city, he must notify the Chief of Police within 48 hours and, in effect, re-register. §52.40.

The impact of these provisions on rights guaranteed by the Constitution is, as we shall see, both sharp and significant.*

Right of Privacy. Among our expanding constitutional guarantees is a right of privacy—a right to be

*Although the essential vice of the ordinance is apparent from its application to appellant, she is also entitled to attack the ordinance on its face and thus to call into question the entire scheme of registration where constitutionally-protected rights are involved. *Thornhill v. Alabama*, 310 U. S. 88, 96-98; *Lanzetta v. New Jersey*, 306 U. S. 451, 453.

let alone, free from unwarranted government intrusion. In *Watkins v. United States*, 353 U. S. ....., ..., 1 L. ed. 2d 1273, 1290, this Court pointed to "the responsibility placed by the Constitution upon the judiciary to insure that the Congress does not unjustifiably encroach upon an individual's right to privacy. . . ." Many years earlier Mr. Justice Brandeis emphasized that the makers of our Constitution "conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men." *Olmstead v. United States*, 277 U. S. 438, 478 (dissenting opinion). Mr. Justice Douglas struck the same note when he wrote "The right to be let alone is indeed the beginning of all freedom." *Public Utilities Commission v. Pollak*, 343 U. S. 451, 467 (dissenting opinion).

The right of privacy is the synthesis of a number of constitutional rights which are applicable here by virtue of the Due Process Clause of the Fourteenth Amendment. The First Amendment shelters the privacy of thought and belief and circumscribes inquiry into private and personal affairs. *West Virginia State Board v. Barnette*, 319 U. S. 624, 642; *United States v. Rumely*, 345 U. S. 41, 58 (concurring opinion). The Fourth Amendment's prohibition of unreasonable searches and seizures "marks the right of privacy as one of the unique values of our civilization." *McDonald v. United States*, 335 U. S. 451, 453. The right to be let alone is also an aspect of the "liberty" which is guaranteed by the Fifth and Fourteenth Amendments. See *Meyer v. Nebraska*, 262 U. S. 390; *Pierce v. Society of Sisters*, 268 U. S. 510. Taken together, these constitutional guarantees establish that a vital area of a person's life is entitled to special protection from governmental intrusion.

The Los Angeles ordinance erodes this precious right to be let alone. Although he may be completely rehabilitated, the "convicted person" must register with the Chief of Police and furnish detailed information which may be transmitted to federal, state or local law enforcement officers. §§52.39, 52.42. Even if his instance of criminality is overshadowed by as much as 35 years of lawful conduct, he will be fingerprinted and his photograph will be taken and made a part of a rogues' gallery which may be exhibited to the public. Moreover, if he changes his residence in Los Angeles, he must notify the Chief of Police within 48 hours.

Privacy is thus compromised. A neighbor who has been a witness to a completely unrelated crime may be shown a convicted person's picture in a rogues' gallery and thereafter spread the poison word. *Cf. State v. Tyndall*, 224 Ind. 364, 66 N. E. 2d 755, 762 (1946), appeal dismissed, 333 U. S. 834. Moreover, the possibility that there may be leaks or careless disclosures from the registration records of federal, state or local law enforcement agencies is far from remote. Under the terms of §52.42(b), a police officer apparently is free to disclose the registration data if he does so "in the regular course of his duties."

It is no mere technical or exaggerated sense of privacy which is violated by the ordinance. On the contrary, it hits the ex-convict where it may hurt him most. Disclosure of an ex-convict's past—even the reminder of it involved in his registration—may have dire consequences on his rehabilitation. James V. Bennett has stated:

> ". . . . It has been my policy as Director of the Federal Bureau of Prisons not to disclose informa-

> tion which would identify any living individual as a former inmate of our prison system, if there is any possibility it might harm him. If he has rehabilitated himself it is especially important that nothing be done to discourage him or thwart his efforts to adjust in the community. . . ." *Bernstein v. National Broadcasting Co.*, No. 249 Misc. 1956 Term, cert. denied, 352 U. S. 945, R. 102.

A similar view has been expressed by Austin H. MacCormick, Professor of Criminology, University of California:

> "Under present penal and correctional methods in the United States, a very substantial percentage of our ex-prisoners are rehabilitated, do not again revert to crime, and become respectable citizens. The will to accomplish this rehabilitation, with the stigma of the ex-convict working against one at every turn, rests in large part on the belief that it is possible to live down a criminal record by years of law-abiding life." *Id.* at 102.

A lucid exposition of the rationale of the right of privacy as applied to convicted persons appears in *Melvin v. Reid*, 112 Cal. App. 285, 297 Pac. 91 (1931). There the court, in holding that a motion picture depicting unsavory incidents from the life of a prostitute who had reformed and rehabilitated herself constituted an invasion of the right of privacy, stated:

> "One of the major objectives of society as it is now constituted, and of the administration of our penal system, is the rehabilitation of the fallen and the reformation of the criminal. Under these theories of sociology it is our object to lift up and sustain the unfortunate rather than tear him down. Where a person has by his own efforts rehabilitated himself,

we, as right-thinking members of society, should permit him to continue in the path of rectitude rather than throw him back into a life of shame or crime. . . ." 112 Cal. App. at 292, 297 Pac. at 93.

Right to Liberty. The liberty guaranteed by the Fourteenth Amendment is "not confined to mere freedom from bodily restraint" but "extends to the full range of conduct which the individual is free to pursue." *Bolling v. Sharpe*, 347 U. S. 497, 499-500. For the convicted person this "liberty" is significantly diminished by the Los Angeles ordinance.

We say "significantly diminished" because the impact of the ordinance far transcends the physical burdens of the registration process. The fact of registration may subject the convicted person to frequent detention and questioning during police roundups of suspects for crimes of which he is completely innocent. Moreover, the requirement in §52.39(d) that a convicted person reveal his prior criminal record may facilitate his subsequent conviction under the California habitual criminal statute, Penal Code §644, and thus be tantamount to compelling self-incrimination. And, as we have explained above, the psychological impact of registration, and the dissemination of photographs, fingerprints and other data, may seriously jeopardize the convicted person's rehabilitation.

Beyond that, the ordinance meaningfully curtails the right of a person "to live and work where he will," which is unquestionably encompassed within the concept of "liberty." *Williams v. Fears*, 179 U. S. 270, 274. A convicted person who wishes to move to Los Angeles or to change his residence within Los Angeles must say

to himself, "I can do this only if I am willing to register with the Chief of Police, acknowledge my past record, and provide him with a great deal of information about myself." The prospect of this demeaning experience amounts to a formidable restriction on a person's freedom to live and work where he will.

These consequences of the registration system make it clear why the Court has spoken of registration legislation as involving "unnecessary and irritating restrictions upon personal liberties" and has emphasized that "champions of freedom for the individual have always vigorously opposed burdensome registration systems." See *Hines v. Davidowitz*, 312 U. S. 52, 70-71; *cf. United States v. Witkovich*, 353 U. S. 194.

Privileges and Immunities. The right to move freely within the United States is an incident of national citizenship protected against interference by the privileges and immunities clause of the Fourteenth Amendment. *Edwards v. California*, 314 U. S. 160, 178-186 (concurring opinions).* Even before the Fourteenth Amendment was enacted, this right of locomotion throughout the nation was held to be a right of national citizenship. *Crandall v. Nevada*, 6 Wall. 35. "It is plain," said Mr. Justice Douglas, "that the right of free ingress and egress rises to a higher constitutional dignity than that afforded by

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*Mr. Justice Jackson's concurring opinion states that circumstances may warrant some restrictions by a state on a citizen's right to migrate, but Mr. Justice Douglas' opinion, concurred in by Justices Black and Murphy, expresses no such qualification. In any event, as we shall subsequently see, status as an unregistered convicted person is no justification for interference with right to migrate.

state citizenship." *Edwards v. California,* 314 U. S. at 181 (concurring opinion).*

The Los Angeles ordinance encumbers this right to move freely within the United States. If a convicted person wishes to move to Los Angeles, his right to do so is burdened with a requirement that he register with the Chief of Police and furnish detailed information to him. If he wishes to change his place of residence within the city he must notify the Chief of Police and in effect re-register. If he should happen to travel to Los Angeles five times within a month, he must register, even though he does not intend to reside there. The Constitution forbids such burdens on the right of free transit in the same way that it outlaws devices designed completely to prevent such transit. *Crandall v. Nevada,* 6 Wall. 35.**

B. Status as a "Convicted Person" Does Not Justify the Ordinance's Infringement of Constitutional Rights.

The Los Angeles ordinance, as we have pointed out, penalizes not conduct, but a morally innocent and passive status—namely, being an unregistered convicted person in Los Angeles. As we shall show, the mere fact of that

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*The statement of the Court in *Williams v. Fears,* 179 U. S. 270, 274, though made without specific reference to the privileges and immunities clause, is nonetheless pertinent: "Undoubtedly the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty, and the right, ordinarily, of free transit from or through the territory of any State is a right secured by the Fourteenth Amendment and by other provisions of the Constitution." See also Chafee, Three Human Rights in the Constitution 162-193 (1956).

**If the requirement of registration can properly be regarded as punishment, the Los Angeles ordinance is a bill of attainder prohibited by the Constitution, for it applies "to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial." *United States v. Lovett,* 328 U. S. 303, 315-316.

status does not justify the restrictions outlined above on the right of privacy, right to liberty, and privileges and immunities of citizens of the United States.

It will be revealing to consider first the only case cited by appellee in which this Court has indicated that a group of persons can be subjected to regulation because of their status rather than their occupation or activities. In *City of New York v. Miln*, 11 Pet. 102, this Court upheld a New York statute requiring that the master of every ship arriving at the port of New York report the name, place of birth, last legal settlement, age, and occupation of every passenger. Appellee points out (Br. on first argument 9-11) that in upholding the statute, the Court stated that "it is as competent and as necessary for a state to provide precautionary measures against the moral pestilence of paupers, vagabonds, and possibly convicts, as it is to guard against the physical pestilence, which may arise from unsound and infectious articles imported . . .", 11 Pet. at 142-143.

The *Miln* case, however, was severely criticized in *Edwards v. California*, 314 U. S. 160. The Court pointed out that *Miln* was decided in 1837 and stated:

> "Whatever may have been the notion then prevailing, we do not think that it will now be seriously contended that because a person is without employment and without funds he constitutes a 'moral pestilence.' Poverty and immorality are not synonymous." 314 U. S. at 177.

Mr. Justice Douglas' concurring opinion in the *Edwards* case dealt with the indigent status in terms directly applicable to the instant case. He said that to allow a state to curtail the right of free movement of those who are poor or destitute would

> ". . . introduce a caste system utterly incompatible with the spirit of our system of government. It would permit those who were stigmatized by a State as indigents, paupers, or vagabonds to be relegated to an inferior class of citizenship. It would prevent a citizen because he was poor from seeking new horizons in other States. It might thus withhold from large segments of our people that mobility which is basic to any guarantee of freedom of opportunity. . . ." 314 U. S. at 181.

Justice Jackson, also concurring, wrote that "The mere fact of being without funds is a neutral fact—constitutionally an irrelevance, like race, creed, or color." 314 U. S. at 184-185.

Thus, the *Miln* case, far from being authority for the Los Angeles ordinance, was unanimously disapproved in terms which underscore the vice of the ordinance which confronts the Court in this case. The fact that a person has at one time been convicted of a crime does not, any more than the fact of indigence, constitute a present "moral pestilence." To uphold the ordinance would permit those stigmatized as "convicted persons" to be relegated to an inferior class of citizenship. And because of their status, such persons would be handicapped in building a new life in another city.

Except for the *Miln* case, in every case cited by appellee in which a registration statute has been upheld, the requirement was imposed on persons engaged in an occupation or other active conduct which is properly subject to regulation under the police power. *United States v. Harriss*, 347 U. S. 612 (lobbyists); *United States v. Kahriger*, 345 U. S. 22 (bookmakers); *Bryant v. Zimmerman*, 278 U. S. 63 (members of secret society);

Walton v. City of Atlanta, 181 F. 2d 693 (5th Cir., 1950) (taxi and bus drivers); *City of Manchester v. Leiby*, 117 F. 2d 661 (1st Cir., 1941) (persons selling literature on streets);* *United States v. Peace Information Center*, 97 F. Supp. 255 (D. D. C., 1951) (foreign agents); *United States v. Slaughter*, 89 F. Supp. 205 (D. D. C., 1950) (lobbyists).** Such cases afford no precedent for imposing registration requirements on persons such as appellant solely by reason of a morally innocent and entirely passive status.

Indeed, statutes penalizing an innocent status have repeatedly been declared unconstitutional. In *Hawaii v. Anduha*, 48 F. 2d 171 (9th Cir., 1931), the court invalidated a Hawaii statute making it a crime habitually to "loaf," "loiter," or "idle" on any street, highway or public place.*** Similarly, in *City of St. Louis v. Gloner*, 210 Mo. 502, 109 S. W. 30 (1908), the Missouri Su-

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*But *cf. Thomas v. Collins*, 323 U. S. 516.

**The Federal Alien Registration Act, 66 Stat. 224 (1952), 8 U. S. C. §1302, and such cases as *Fong Yue Ting v. United States*, 149 U. S. 698 (registration of certain aliens) stand on a different footing. It has long been recognized that Congress, in furtherance of its power "To establish an uniform Rule of Naturalization," has pervasive power with respect to aliens. U. S. Const. Art. I, §8, cl. 4; see *Harisiades v. Shaughnessy*, 342 U. S. 580, 586.

***The court quoted the statement of the Supreme Court of Hawaii: "Visitors, lured by the fame of our climate and of our natural scenery and the hospitality of our people, come here for recreation and pleasure. Many of them, having no other occupation, habitually but harmlessly idle or loiter upon our streets and highways. In their pursuit of happiness, which is a guaranteed right, they loiter before shop windows, pause to enjoy the changing colors of the ocean and to talk with friends. It would be shocking to say that so long as they are innocent of any wrong and conduct themselves with due regard to the rights of others and the good order of the community the legislature has the constitutional authority to declare them misdemeanants and subject them to arrest and imprisonment." 48 F. 2d at 172.

preme Court declared void a city ordinance making it unlawful for a person to "lounge, stand or loaf around" public places. Less than a year ago it was held an "unlawful invasion of personal rights and liberties" for the City of Chico, California, to prohibit, subject to very limited exceptions, persons under 17 years of age from being in any public place between 10 P.M. and 5 A.M. *Alves v. Justice Court*, 148 A. C. A. 441, 306 P. 2d 601 (1957).*

The ordinance's restriction of constitutional rights cannot be justified on the assumption that "convicted persons" are more likely than the population in general to commit crimes.** A similar assumption might be made with respect to indigents with at least as much plausability,*** and yet the *Edwards* case establishes that the status of indigence cannot be a basis for a deprivation of constitutional rights. Likewise, there may be evidence that the crime rate among negroes is higher than that for the population as a whole,**** but it seems apparent that negroes could not be required to register on that basis.

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*Analogous to these cases is *Stromberg v. California*, 283 U. S. 359, where this Court held unconstitutional a California Penal Code provision making it unlawful to display a red flag in a public place as a sign, symbol or emblem of opposition to organized government. See also *Wieman v. Updegraff*, 344 U. S. 183, 191 ("Indiscriminate classification of innocent with knowing activity must fall as an assertion of arbitrary power.")

**The accuracy of such an assumption is assessed at pp. 36-41.

***See argument for appellee in *Edwards v. California*, 314 U. S. at 167-168.

****See 27 FBI Unif. Crime Rep. 113 (1956); Sutherland, Principles of Criminology 138-143 (Cressey ed. 1955).

Nor can support for the Los Angeles ordinance properly be drawn from the power of states to prevent convicted persons from practicing medicine, *Barsky v. Board of Regents*, 347 U. S. 442, from practicing law, see *Theard v. United States*, 353 U. S. ....., 1 L. ed. 2d 1342, from holding public office, *State v. Langer*, 65 N. D. 68, 256 N. W. 377 (1934), or even from voting, see *Fiswick v. United States*, 329 U. S. 211, 222.* In each such instance the state has special responsibility and power to prescribe standards for participation in the occupation or activity from which the convicted person is barred. In contrast, no power of regulation or control arises from the mere fact of "being" in Los Angeles. A person's active conduct or his right to participate in an occupation is a proper subject of regulation under the police power, but his innocent and passive status is not.

The principal cities in other countries with a common law background similar to ours have not found it necessary or desirable to maintain the close surveillance of convicted persons imposed by the Los Angeles ordinance. As set forth in the margin,** major cities in Australia,

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*"Privilege of voting is not derived from the United States, but is conferred by the State and, save as restrained by the Fifteenth and Nineteenth Amendments and other provisions of the Federal Constitution, the State may condition suffrage as it deems appropriate." *Breedlove v. Suttles*, 302 U. S. 277, 283; see U. S. Const. Art. 1, §2, Cl. 1, and §4, Cl. 1.

**On July 8, 1957, we sent inquiries to the Chief of Police in 39 cities in 20 countries to determine whether registration ordinances are in effect in the major cities in common law countries or in certain other cities. The replies indicate that the following cities do not require registration of convicted persons: in Australia: Adelaide, Brisbane, Melbourne, Perth, and Sydney; in Canada: Ottawa, Toronto, Vancouver, and Winnipeg; in Ceylon: Colombo; in England: Birmingham, Liverpool, London, and Sheffield; in Germany: Berlin; in India: Hyderabad; in New Zealand: Wellington; in

Canada, Ceylon, England, New Zealand, Northern Ireland, Scotland, and Wales have indicated that they do not have ordinances requiring the registration of convicted persons. No city in any common law jurisdiction has reported that it has such an ordinance.*

It is perhaps not surprising that the practice in totalitarian countries is to the contrary. In the Soviet Union a registration system requiring every citizen to carry a passport is in force throughout the country except on the collective farms.** In Nazi Germany registration requirements reached a zenith. Kempner, The German National Registration System as Means of Police Control of Population, 36 J. Crim. L. & C. 362 (1946).

Northern Ireland: Belfast; in Scotland: Edinburgh and Glasgow; and in Wales: Cardiff. No city has reported that it has such an ordinance. The replies from Oslo and Stockholm indicate that the national governments of Norway and Sweden maintain a central file of persons convicted of crimes, but there is no indication that said cities or national governments require convicted persons to register. At the time this brief was printed, no reply had yet been received from the following cities: Auckland, Bombay, Buenos Aires, Calcutta, Copenhagen, Hamburg, Helsinki, Karachi, Madras, Manila, Montreal, New Delhi, Paris, Rio de Janeiro, and Zurich. The Chief Constable in Manchester, England, indicated that he could not properly supply the requested information. A copy of the letter of inquiry and the replies have been filed with the Clerk, and copies have been supplied to the parties.

*State or national legislation in England, Scotland, Wales, and the State of Andhra Pradesh, India requires some multiple offenders to notify the police or private authorities of their addresses for a limited period after release from imprisonment. These statutes are discussed at pp. 44-45, *infra*.

**Vlasov and Evtikhiev, Soviet Administrative Law 289-294 (1950) (translated from the Russian by Professor Leon Lipson, Yale Law School). The following justification for the system is offered in this text: "In the struggle with the remnants of the defeated class enemies, parasites, swindlers, and declassed elements, measures were required for keeping track of the population, for its registration, in order to bring to light those elements, hostile to Soviet authority and harmful to the Soviet state, residing in cities, institutions, factories and workshops."

Ordinances requiring the registration of convicted persons are a recent development in the United States, the 1933 Los Angeles ordinance being the forerunner.* Only a small fraction of cities in this country now have such ordinances. In 1953 and 1954 the Pennsylvania Law Review sent questionnaires concerning criminal registration ordinances to the 400 cities in the United States with a population over 25,000. Note, 103 U. of Pa. L. Rev. 60, 107 (1954).** Of the 241 cities which responded, only 43 or about 18 per cent have such ordinances. *Ibid.* Only five states have registration laws and all are more narrowly drawn than the Los Angeles ordinance. *Id.* at 65.*** More significantly, the constitutionality of these registration ordinances or laws has apparently never previously been determined by a federal court or a state court of last resort, and even in lower state courts, litigation concerning such provisions has been infrequent and inconclusive. *Id.* at 95-96.

C. The Ordinance Is Not Reasonably Restricted to the Evil With Which It Purports to Deal.

In *Butler v. Michigan*, 352 U. S. 380, this Court invalidated Section 343 of the Michigan Penal Code which

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*In Colonial Massachusetts, however, under the General Laws of 1672, the letter "B" was branded on the forehead of every convicted burglar or highway robber, and a "Vagabond Quaker" could be punished by branding on the shoulder. The Colonial Laws of Massachusetts 12-13, 62-63 (Whitmore ed. 1887). This, it seems safe to say, is not a proud memory.

**The six cities under 25,000 to which the law review sent inquiries are disregarded here because, as the Note itself pointed out, they are not statistically significant. *Ibid.*

***5 Arizona Rev. Stat. Ann. §13—1271-1274 (sex offenders only); California Penal Code §290 (sex offenders only); Chapter 28470, 1953 Laws of Florida (felon registration in cities over 450,000); 38 Illinois Ann. Stat. §192.29-192.32 ("drug addicts" only); N. J. Stat. Ann. 2A:169A-1 (narcotics law violators only).

in effect, made it a misdemeanor to sell or make available to the general reading public any book containing obscene language "tending to the corruption of the morals of youth." The Court held that the statute was "not reasonably restricted to the evil with which it is said to deal," because it quarantined the general reading public against books in attempting to prevent corruption of youth. For that reason the Court concluded that the legislation "arbitrarily curtails" one of the liberties of the individual enshrined in the Due Process Clause of the Fourteenth Amendment. 352 U. S. at 382-383. Examination of the provisions of the Los Angeles ordinance will show that it likewise is an arbitrary curtailment of liberty because it is not reasonably restricted to the evil with which it purports to deal.

The Los Angeles ordinance is "directed at the evil of professionalism in crime," as appellee readily concedes (Br. on first argument 3).* Appellee urges that "There seems to be no good reason why a municipality may not require the registration of 'professional criminals'" (*Id.* at 19). The ordinance, however, is not drawn so as to secure the registration only of "professional criminals." On the contrary, it requires the registration of anyone who has been convicted anywhere in the world since 1921 of an offense punishable as a felony in California (or of other specified offenses) regardless of the penalty actu-

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*The statement of purpose in §8 of the original version of the Los Angeles ordinance states that the ordinance is directed against "habitual and dangerous criminals traveling from place to place." Ordinance No. 73,013; see Los Angeles Daily Journal, September 13, 1933, p. 10.

ally imposed.* To sweep so broadly for the purpose of dealing with the "evil of professionalism in crime" is, as we shall see, another instance of burning the house to roast the pig. *Butler v. Michigan*, 352 U. S. at 383.

First Offenders and Probationers. The unwarranted broadness of the ordinance is most graphically shown with respect to first offenders and probationers. The available data shows that the great bulk of them become and remain law-abiding citizens.

The good record compiled by federal probationers was pointed out by Mr. Chief Justice Warren in the following statement before the American Law Institute in 1955:

> ". . . The reports indicate that about five-sixths of offenders placed on probation in the federal courts fulfill the terms of their probation. While only scattered studies have been made throughout the country of the conduct of probationers after successfully completing probation, it seems reasonable to suppose that most persons who live orderly lives for substantial periods of probation will continue to do so after being discharged. A careful study which was made a number of years ago in the Northern District of Alabama, under the direction of Dr. Morris G. Caldwell, professor of sociology in the University of Alabama, with the aid of members of the probation staff of the Northern District of Alabama for interviews, bears this out. Of 403 persons who were selected by an approved sampling method from per-

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*The pervasive thrust of the ordinance is illustrated by the fact that India's Prime Minister Nehru would apparently have to register if he came to Los Angeles. In 1922, as the result of picketing during his country's independence struggle, Mr. Nehru was sentenced to 18 months' imprisonment for extortion, an offense which would have been punishable as a felony in California. Compare Nehru, Toward Freedom, 84-85 (1941), with California Penal Code §§519-520.

sons who had successfully completed probation during a period ranging from 5½ years to 11½ years prior to the study, 395, or 98 per cent, were free from conviction of felonies, and 337, or 83.6 per cent, were free from subsequent convictions of any kind, either felonies or misdemeanors." Warren: Probation in the Federal System of Criminal Justice, quoted in 19 Federal Probation No. 3, p. 3, (Sept. 1955).

The figures cited by the Chief Justice are confirmed in a recent study by Dr. Ralph W. England of the University of Illinois which indicates that only 17.7 per cent of a sampling of federal probationers were convicted of a felony or misdemeanor in a 7-12 year period subsequent to completion of probation. England, A Study of Post-probation Recidivism Among Five Hundred Federal Offenders, 19 Federal Probation No. 3, p. 10 (Sept. 1955).* Dr. England's study, which was instituted by the Administrative Office of the United States Courts, dealt with 500 federal offenders who successfully finished probation between 1939 and 1944 and who had not been originally sentenced to a penal institution. The group, which contained 62.4 per cent first offenders,** was studied in 1951

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*In a later article Dr. England offers the following explanation for the close similarity between his findings and those of other researchers: ". . . Much recent research had indicated that most people commit one or two crimes in the course of their lives for which they are not caught, but that most of them refrain from making a habit of it. It seems quite possible that probation is tapping into this 'self-correcting' segment of offenders, since probation deals mainly with first offenders and minor recidivists." England, What Is Responsible for Satisfactory Probation and Post-Probation Outcome?, 47 J. Crim. L., C. & P. S. 667, 675 (1957).

**Because of the evident tendency of judges to give first offenders probationary sentences, any group of probationers is likely to have a significant percentage of first offenders.

to determine the incidence of felony or misdemeanor convictions subsequent to the completion of probation.

The first offenders within the group studied by Dr. England had an even better record than the group as a whole. Of those who had no arrests prior to their federal offense, only 7.3 per cent had post-probation convictions; for those with no prior conviction, the recidivism rate was 11.8 per cent. On the other hand, of those who had been arrested prior to their federal offense, 28.2 per cent had post-probation convictions, and for those with previous convictions, the recidivism rate was 32.6 per cent. The recidivism rate rose from 20.9 per cent for those with one or two prior arrests to 47.8 per cent for those who had been arrested five or six times previously.

Other studies in the field of criminology bear out the likelihood that first offenders will subsequently lead law-abiding lives and that their recidivism rate will be markedly less than that for multiple offenders. Rumney and Murphy, in Probation and Social Adjustment 160 (1952), a study of 1,000 Essex County, New Jersey, probationers, state:

> "It appears that there is considerable validity to the idea that first offenders need not get into any further difficulty with the law. Whatever the explanation, the fact remains that there is a large number of persons who get arrested only once in their lives."

Clark Tibbitts' study of 3,000 parolees indicates that first offenders violate parole less than one third as often as habitual criminals, as shown in the table set forth in the

margin.* Professor Thorsten Sellin's study of fingerprints, which probably reflects the incidence of arrest rather than conviction, shows that multiple offenders are about two and one-half times as likely to be fingerprinted again as are first offenders. Sellin, The Criminal History of Released Prisoners, 35 J. Crim. L. & C. 223 (1944).

A word should be said of the pioneering Glueck studies in the prediction of criminal behavior. The Gluecks investigated two test groups—500 young adult reformatory graduates and 1,000 young delinquents processed by the Boston Juvenile Court. In each group a surprisingly high percentage of the persons studied had engaged in criminal behavior prior to the reformatory term or court appearance which resulted in their inclusion in the Glueck samples.** When this fact is taken into account, the rela-

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* "Type of Offender in Relation to Record on Parole

		Record on Parole							
Type of Criminal	Total	Dis-charge	Per cent	Vio-lation	Per cent	Minor	Per cent	Major	Per cent
1. First Offender	1638	1348	82.3	290	17.7	126	7.7	164	10.0
2. Occasional Offender	1124	812	72.2	312	27.8	103	9.2	209	18.6
3. Habitual and Professional Criminals	238	98	41.2	140	58.8	29	12.2	111	46.6
Total	3000	2258	75.3	742	24.7	258	8.6	484	16.1"

Clark Tibbitts, Success or Failure on Parole Can Be Predicted: A Study of the Records of 3,000 Youths Paroled from the Illinois State Reformatory, 22 J. Crim. L. & C. 11, 25 (1931).

**93.4% of the 500 young adults were regarded as total or partial "failures" from the standpoint of lawful behavior prior to their reformatory sentence. Glueck and Glueck, After-Conduct of Discharged Offenders 21-22 (1945). All but 45 of the 1,000 delinquents had been "seriously delinquent" prior to the arrest which brought them into Boston Juvenile Court. *Id.* at 17.

tively high percentage of subsequent recidivism revealed by the Gluecks is easily understood. Moreover, the Glueck researches substantiate the conclusions of the other studies, namely, that the first-offender group is by far the least recidivistic. See Glueck and Glueck, 500 Criminal Careers 250, 282 (1930).*

We are not aware of any studies which compare the crime rate of the first-offender group with that for the population as a whole. However, the FBI Uniform Crime Reports afford a basis for rough approximations. During 1955, police in 1,771 cities with an aggregate population of 66 million arrested and charged 2.9 million persons (4.46 per cent of the population) with violations other than traffic. 27 FBI Unif. Crime Rep. 51-53 (1956). Since approximately five people are found guilty for every seven who are arrested and charged, *Id.* at 57, it follows that in those cities approximately 2.1 million persons (3.2 per cent of the population) were convicted in 1955. Projecting those figures over a 10 years period, 21 million (32 per cent) of the aggregate population of those cities will have been convicted of a felony or misdemeanor. Even if the 32 per cent figure is substantially reduced to account for the repeaters among the persons convicted in any given year, it is apparent that the crime rate for the general population is not significantly less (and may even be greater) than that reported for first offenders in such studies as those of Caldwell and England.

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*Prior criminal record is a factor on all principal recidivism prediction tables. *E. g.*, Glueck and Glueck, 500 Criminal Careers 282 (1930); Hakeem, Glueck Method of Parole Prediction Applied to 1,861 Cases of Burglars. 36 J. Crim. L. & C. 87, 90, 93 (1945); Burgess, Factors Determining Success or Failure on Parole, 19 J. Crim. L. & C., No. 1, pt. II, pp. 239, 260-261, 264-265 (1928); Ohlin, Selection for Parole 52, 71, 124-125 (1951).

The foregoing materials demonstrate that a catchall registration ordinance of the Los Angeles type is neither reasonable nor necessary to accomplish its avowed purpose of combatting professionalism in crime. The first offender, especially if he is placed on probation, is sharply distinguishable from the "professional criminal" in terms of the only significant yardstick—the likelihood of subsequent criminal behavior. Indeed, the first offender, as we have observed, bears a much closer behaviorial resemblance to the population at large than to the professional criminal. See also Nussbaum, First Offenders—A Second Chance, 4 Crim. L. Rev. 1 (1957). Thus, to maintain surveillance of professional criminals certainly does not require invasion of the constitutionally-protected rights of every person who has been convicted of any crime punishable as a felony in California (or of certain other crimes) any place in the world.*

Time elapsed since conviction. Persons who have been convicted at any time since 1921 are required to register under the Los Angeles ordinance. Thirty-five years of lawful conduct affords no exemption from the dragnet of the ordinance. This result is directly contrary to belief in personal rehabilitation—a right to reform—which is a basic tenet of our American judicial system.

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*Extensive records to aid in criminal investigation will, in any event, be available to the Los Angeles police from the Federal Bureau of Investigation and the California State Bureau of Identification and Investigation, as well as from their own files. See Whitehead, The FBI Story 139 (1956) ("By mid 1956, the FBI had a total of 141,231,773 fingerprints on file . . ."); *Floherty*, Our FBI 89-120 (1951); 1954-56 Biennial Report of the Attorney General of California 51-62.

The essence of this right to reform was eloquently stated by the New York Court of Appeals in *People v. Pieri*, 269 N. Y. 315, 323, 327, 199 N. E. 495, 497, 499 (1936):

> ". . . We would never go so far, I am sure, as to say that because a man had been in prison he remained a criminal all his life. Some men, as we know, with no criminal propensities at all have made mistakes, been overtaken by temptation, and paid the penalty the state demands. We would not add to their burden by saying or even intimating that they should be shunned or classed as criminals.
>
> . . .
>
> "Persons who have been convicted of crime and served the sentence imposed are not thereafter barred from society or intercourse with other human beings; they are not outcasts, nor to be treated as such. The Legislature did not intend to close the doors to reformation, repentance, or a new try at life. . . ."

Only last Term in *Schware v. Board of Bar Examiners*, 353 U. S. 232, the Court in effect recognized the right to reform in holding that the State of New Mexico deprived Schware of due process by denying him permission to take the 1953 bar examination because of conduct all of which antedated 1940. The Court held that Schware's lawful and useful conduct since 1940 outweighed any inference of bad moral character that might have been drawn from his use of aliases from 1933 to 1937, his arrests prior to 1940, and his membership in the Communist party from 1932 to 1940. Yet under the Los Angeles ordinance, a person's exemplary conduct

since conviction as long ago as 1922 would not free him from the registration requirements.*

Not only is the Los Angeles ordinance at war with widely-recognized principles of rehabilitation, but it is also inconsistent with the available data on the relationship between recidivism and the time elapsed since conviction or release. Dr. England's study of 500 federal probationers, discussed above, shows that the likelihood of recidivism drops off drastically with the passage of time.**

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*The principle of rehabilitation is also reflected in *Theard v. United States*, 353 U. S. ....., 1 L. ed. 2d 1342, where the Court held that disbarment by the State of Louisiana of a lawyer who uttered a forgery in 1935 while suffering some degree of insanity should not have been automatically accepted by a federal district court in Louisiana. The Court pointed out that the illegal act had taken place 18 years before the disbarment proceedings and that the lawyer had actively practiced for six years after recovering his capacity, including the argument of 36 appellate cases, without being charged with any misconduct or impropriety.

** TABLE 2.—SPECIFIC YEAR AFTER END OF PROBATION WITHIN WHICH FIRST CONVICTION OCCURRED

YEAR	NUMBER	PERCENT	CUMULATIVE PERCENT
TOTAL	87	100.0	—
1st	24	27.6	—
2nd	9	10.4	38.0
3rd	13	14.9	52.9
4th	5	5.8	58.7
5th	9	10.3	69.0
6th	9	10.3	79.3
7th	6	6.9	86.2
8th	5	5.8	92.0
9th	1	1.1	93.1
10th	4	4.6	97.7
11th	2	2.3	100.0
12th	0	0.0	—"

England, A Study of Postprobation Recidivism Among Five Hundred Federal Offenders, 19 Federal Probation No. 3, at p. 14 (Sept. 1955).

The sharp decline in recidivism is also borne out by a study of federal parolees which revealed that most violations occur shortly after release and that only 4.1 per cent of those who violate parole do so more than two years after release. Killinger, Parole and Other Release Procedures, in Contemporary Correction 361, 365 (Tappan ed. 1951). Thus, it is apparent that continuing police surveillance of persons who were convicted as much as 35 years ago can only be justified by "so dogmatic an inference as to be wholly unwarranted." *Cf. Schware v. Board of Bar Examiners,* 353 U. S. 232, 251 (concurring opinion).

Many of the basic constitutional defects of the Los Angeles ordinance are pinpointed by comparison with the laws of foreign countries under which certain convicted persons may be required to notify authorities of their addresses. As indicated by the extract set out in the margin* in England and Wales multiple offenders

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*Section 22 of the Criminal Justice Act, 1948, 11 & 12 Geo. VI Ch. 58, provides: "(1) Where a person is convicted on indictment of an offence punishable with imprisonment for a term of two years or more and that person—

(a) has been convicted on at least two previous occasions of offences for which he was sentenced to Borstal training or imprisonment; or

(b) has been previously convicted of an offence for which he was sentenced to corrective training,

the court, if it sentences him to a term of imprisonment of twelve months or more, shall, unless having regard to the circumstances, including the character of the offender, it otherwise determines, order that he shall for a period of twelve months from his next discharge from prison be subject to the provisions of this section."

Section 29 of the Prison Act, 1952, 15 & 16 Geo. VI and 1 Eliz. II Ch. 52, provides in part: "(1) Where an order has been made under section twenty-two of the Criminal Justice Act, 1948,

(a) the offender shall, on his next discharge from prison and thereafter from time to time, inform the appointed society of his address in accordance with such instructions as may be given to him by or on behalf of the society: . . ."

may be required to notify a designated society (the Central After-Care Association, a private organization) of their addresses for a year after release from prison. This requirement is judicially imposed as a part of the sentence, rather than being a legislative act directed toward an entire class of persons. Moreover, those persons required to report their addresses must be given notice of their obligation by the governor of their prison.* Registration with the police is required only for failure to notify the designated society.

The provisions in force in Scotland under the Criminal Justice (Scotland) Act, 1949, 12, 13 & 14 Geo. VI Ch. 94, and the Prisons (Scotland) Act, 1952, 15 & 16 Geo. VI and 1 Eliz. II Ch. 61, are substantially identical with those in England and Wales. In the State of Andhra Pradesh, India, notification of address is required of habitual offenders and certain second offenders (the latter for not more than five years), but no such notification is required of "young" offenders or first offenders. Madras Act VI of 1948 (habitual offenders); The Indian Code of Criminal Procedure, Act V of 1898, §§562-565 (young, first and previously convicted offenders).

Consideration of these foreign statutes accentuates the arbitrary features of the Los Angeles ordinance, namely that it (1) fails to restrict its application to multiple or habitual offenders, (2) fails to limit the time following sentence or release during which registration with the Chief of Police is required, (3) fails to provide notice of its requirements, and (4) imposes duties with respect

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*Section 29(2), Prison Act, 1952, 15 & 16 Geo. VI and 1 Eliz. II Ch. 52.

to providing information and being photographed substantially in excess of the "notification of address" required by the foreign laws. Surely an ordinance so indiscriminate in its coverage and so demanding of its subjects is not reasonably restricted to coping with "the evil of professionalism in crime."

Conclusion.

The judgment of the court below should be reversed and the cause remanded with instructions to dismiss the complaint against appellant.

Respectfully submitted,

WARREN M. CHRISTOPHER,
Amicus Curiae for Appellant.

RICHARD E. SHERWOOD,
Of Counsel.

August, 1957.

APPENDIX.

Los Angeles Municipal Code §§52.38-52.43.

SEC. 52.38. CONVICTED PERSON DEFINED.

For the purpose of Sections 52.38 to 52.43, inclusive, the words "convicted person" are defined as follows:

(a) Any person who, subsequent to January 1, 1921, has been or hereafter is convicted of an offense punishable as a felony in the State of California, or who has been or who is hereafter convicted of any offense in any place other than the State of California, which offense, if committed in the State of California, would have been punishable as a felony.

(b) Any person who, subsequent to January 1, 1921, has been or hereafter is convicted in the State of California, or elsewhere, of the violation of any law, whether the same is or is not punishable as a felony:

1. Relating to or regulating the possession, distribution, furnishing, or addiction to the unlawful use of any narcotic as defined and referred to in Division 10 of the California Health and Safety Code. (Amended by Ord. No. 106,989, Eff. 3/17/56.)

2. Regulating or prohibiting the carrying possession, or ownership of any concealed weapon, or deadly weapon, or any weapon capable of being concealed, or regulating or prohibiting the possession, sale or use of any device, instrument, or attachment designed or intended to be used for the purpose of silencing the report, or concealing the discharge or flash of any firearm;

3. Regulating or prohibiting the use, possession, manufacture, or compounding of tear gas, or any

other gas, which may be used for the purpose of temporarily or permanently disabling any human being.

(c) (Repealed by Ord. No. 106,989, Eff. 3/24/56.)

(d) Any person who has been, since January 1, 1921, or who hereafter is convicted of a crime in the State of California under the provisions of one or more of the following sections of the Penal Code of California, to wit: 264 [rape], 265 [abduction for marriage or defilement], 286 [sodomy], 288 [lewd or lascivious acts with child under 14], 288a [oral copulation], subdivision 1 of 647a [vagrancy: annoying or molesting child under 18], or of subdivisions 1 or 2 of 311 [indecent exposure], or who has been, since January 1, 1921, or hereafter is convicted in any place other than the State of California of an offense which, if committed in this State, would have been punishable under one or more of said sections. (Amended by Ord. No. 108,387, Eff. 12/27/56.)

1. Any person who has been since January 1, 1945, or who hereafter is convicted of a crime in the State of California under the provisions of Section 647(5) [vagrancy: lewd or dissolute persons or persons who loiter in or about public toilets in public parks] of the Penal Code of the State of California, or who has been since January 1, 1945, or hereafter is convicted in any place other than the State of California of any offense which, if committed in this State, would have been punishable under said section.

(e) Any person who has been, since January 1, 1921, or hereafter is convicted in the State of California or

elsewhere of any attempt or conspiracy to commit any offense described or referred to in this section.

(f) Provided, however, that any person, except as hereinafter set forth, whose conviction is or has been set aside in a manner provided by law, shall not be deemed a convicted person; provided further, however, that one who has been convicted of the commission of one or more of the crimes referred to in Subdivision (d) hereof, and whose conviction has been set aside at the termination of probation, and in connection therewith, shall be considered a convicted person, as such term is used in Section 52.28 [sic] to Section 52.43, inclusive.

SEC. 52.39. CONVICTS REGISTRATION—INFORMATION REQUIRED.

(a) It shall be unlawful for any convicted person to be or remain in the City of Los Angeles for a period of more than five days, without, during such five-day period, registering with the Chief of Police in the manner hereinafter prescribed.

(b) Any convicted person who does not reside in the City, but who has a temporary or permanent place of abode outside the City and comes into the City on five occasions or more during any thirty-day period, shall be subject to the provisions of Sections 52.38 to 52.43, inclusive, and shall, on or before entering the City on such fifth occasion, register in the manner prescribed in Subdivision (d) hereof.

(c) Provided, that any person who has once registered with the Chief of Police as a convicted person, shall not be required to register again, except as provided in Section 52.40 of this Code; provided further, however, that any person convicted of any of the crimes enumer-

ated in Subdivision (d) of Section 52.38 of this Code shall register as provided in this section, regardless of whether he has previously so registered as a convicted person by reason of his conviction of some crime other than those enumerated in said Section 52.38(d).

(d) Every person required by this section to register shall do so by filing with the Chief of Police of the City of Los Angeles a statement in writing, signed by such person, upon a form prescribed and furnished by the Chief of Police, giving the following information:

1. His true name and all aliases which he has used or under which he may have been known;

2. A full and complete description of his person;

3. The kind, character and nature of each crime of which he has been convicted;

4. The place where each of such crimes was committed and the place or places of conviction;

5. The name under which he was convicted in each instance and the date thereof;

6. The name, if any, and the location of each prison, reformatory, jail or other penal institution in which he was confined or to which he was sentenced;

7. The location and address of his residence, stopping place, living quarters or place of abode in the City; if more than one residence, stopping place, or place of abode, that fact must be stated and the location and address of each given;

8. A statement of the kind of residence, stopping place or place of abode in which he resides, whether the same is temporary or permanent, *i.e.*, whether the same is a private residence, hotel, apartment house or other building or structure;

9. The length of time he has occupied each such place of residence, stopping place or place of abode; and the length of time he expects or intends to remain in the City;

10. Such other and further information as may be required by the Chief of Police for the purpose of aiding and assisting in carrying into effect the provisions and intent of Sections 52.38 to 52.43, inclusive.

SEC. 52.40 CONVICTS—CHANGE OF RESIDENCE.

Any convicted person, except a non-resident, who is required to register under the provisions of Sections 52.38 to 52.43, inclusive who changes his place or residence, stopping place or living quarters, shall, within 48 hours after such change, and any non-resident mentioned in Section 52.39(b) who has registered and changes his place of residence, stopping place or living quarters, shall, upon his next entry into the City after such change, notify the Chief of Police of such fact and furnish to such Chief of Police the address of his new residence, stopping place or living quarters in the same manner and with the same detailed information as is required in the filing of the original statement under the provisions of Section 52.39.

SEC. 52.41. CONVICTS, PHOTOGRAPHING AND FINGERPRINTING.

Each convicted person, at the time of registering and furnishing the information required by Sections 52.39 and 52.40 shall be photographed and fingerprinted by the Chief of Police, who shall cause such photographs and fingerprints to be made a part of the record provided for by Sections 52.41 and 52.43.

SEC. 52.42. RECORDS CONFIDENTIAL.

(a) The statements, photographs and fingerprints hereinbefore provided for shall not be open to inspection by the public, or by any person other than a regularly employed peace or law enforcement office [sic]. Any such photograph, or duplicates thereof, may be exhibited to persons other than police officers of the City for the purpose of assisting in identifying perpetrators of any crime. Copies of said statements, photographs and fingerprints may be transmitted to the sheriff of any county of the State of California, to the head of any organized police department of any municipality in said state, or to the head of any department of the State of California engaged in the enforcement of any criminal law of this state, or to the head of any federal law-enforcement agency, or to any sheriff or chief of police of a municipality, or to the head of any other law-enforcement agency of any state in any state or territory outside the State of California, when request is made in writing by such sheriff or other head of a law-enforcement agency asking for the record of a certain person named therein, or for the record of a person whose photograph or fingerprints reasonably correspond with photographs or fingerprints submitted with such request, and stating that such record is deemed necessary for the use of such law enforcement officer or agency in or concerning the investigation of any crime, or any person who is accused of committing a crime, or any crime which is reported to have been committed, and further stating that the record will be used only for such purpose.

(b) Any police officer or other employee of the Police Department who discloses to any person any information

contained in any statement required to be filed under the provisions of Sections 52,38 to 52.43 inclusive, otherwise than in the regular course of his duties, shall be guilty of a misdemeanor.

(c) Nothing contained in Sections 52.38 to 52.43 inclusive, shall prevent the Chief of Police from furnishing to the sheriff of any county, the Chief of Police of any municipality, or the head of any other law-enforcing agency which maintains any system of registration of convicted persons copies of the statements required to be filed under the provisions of Sections 52.38 to 52.43 inclusive, together with photographs and fingerprints of persons making such statements when and if such sheriff, chief of police, or other head of a law-enforcing agency furnishes to the Chief of Police of this City copies of statements, photographs and fingerprints procured by him, and it is hereby made the duty of such Chief of Police to arrange for the exchange of such information.

(d) Any police officer or other employee of the Police Department may, any other provisions herein notwithstanding, furnish to persons other than peace officers, photographs, fingerprints, descriptions and other data relative to persons registered as convicted persons, as defined by Sec. 52.38(d)-1 of this Code, for the purpose of furnishing the information required by Sec. 41.11.2 of this Code, or for the purpose of securing and effecting the enforcement of said section; and the furnishing of such information, pictures or fingerprints shall be within the regular course of his duties.

SEC. 52.43. FALSE STATEMENTS.

(a) No person required by any provision of Sections 52.38 to 52.42 inclusive, to furnish a statement, shall in such statement give any false or fictitious address or any address other than a true address or intended address, or furnish in the making of any such report any false, untrue or misleading information or statement, relating to any information required by any of the provisions thereof to be made or furnished.

(b) Continuing Offense. The duty to furnish statements when and in the manner provided by Sections 52.38 to 52.42 inclusive, is hereby declared to be a continuing one, and for each day that any person required under the provisions of Section 52.38 to 52.42 inclusive to furnish a statement fails to do so, such failure shall constitute a separate offense; provided, however, that no person may be convicted more than once on account of violations occurring by reason of failure, on a series of days, to furnish such statements; provided, further, that nothing contained herein shall be deemed a bar to subsequent prosecutions for violations of the provisions of this Code occurring subsequent to a prior conviction or acquittal of a violation thereof.

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JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1957

No. 47

VIRGINIA LAMBERT,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

PETITION FOR REHEARING AND/OR MODIFICATION OF OPINION.

ROGER ARNEBERGH,
City Attorney,
DONALD M. REDWINE,
Assistant City Attorney,
PHILIP E. GREY,
Deputy City Attorney,
40-K City Hall,
Los Angeles 12, California,
Attorneys for Appellee.

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VIRGINIA LAMBERT,

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THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

PETITION FOR REHEARING AND/OR MODIFICATION OF OPINION.

Appellee respectfully petitions this Honorable Court for a rehearing and/or a modification of the opinion herein rendered.

Grounds for Rehearing.

A. The Conclusion Reached Is Contrary to Established Law and the Facts of This Case.

The general principle of law is recognized by this Court that all crimes need not include elements of knowledge as an essential ingredient. The cases cited in the opinion clearly establish the firmness of this principle. The decision of this Court as disclosed by the majority opinion actually turns upon a ruling on the denial of

the admission of evidence to show lack of knowledge on the part of appellant of the need to register. This is not the ground of appellant's appeal.

Appellant's attack under the due process clause was directed at the face of the ordinance and not at the evidence presented. This is clearly apparent from her argument (Appellant's Op. Br. pp. 12-19). Under the heading "Due Process" (Appellant's Op. Br. pp. 24-27), a general treatise on that subject was presented without any effort to apply such generalizations to the facts of this case. Appellant's "Conclusion" is directed at the constitutionality of the ordinance and not at the facts or application of the law (Appellant's Op. Br. p. 31). It is clearly apparent from the opinion of the majority of the Court herein rendered that all of appellant's contentions in that regard were rejected, yet the conclusion stated in the opinion is based solely upon an assumption of a state of facts based solely on conjecture arising out of the action of the trial court in sustaining the objection to the introduction of evidence and not established by proof in the case. The impact of this conclusion and the principle announced by reason thereof will have far-reaching implication and is directly contrary to the law.

Under the principle here announced, law enforcement officers must not arrest or charge a citizen with crime unless the officers can prove the citizen had knowledge of the existence of the law. Under such circumstances the purpose of registration laws is rendered ineffective. If the police have knowledge of the presence of "ex-convicts" within the community, there is no need to have them register. The very purpose of a registration law is to require persons unknown to the law-enforcement

agencies to come forward and give information of their presence. It would create an insurmountable task for law enforcement to require officers to search not only records of all local state courts but records of foreign state courts to first determine whether a person is an "ex-convict," and then search for such person in order to advise him of the requirement of the registration ordinance. The principle here announced will encourage the average citizen instead of trying to obey the law, to carefully endeavor to avoid any knowledge whatever of that which is declared to be criminal law. No longer is every cititzen presumed to be fully aware of the law which declares the doing of such acts, or the omission to do them, to be criminal. Undoubtedly, application of this rule is going to materially affect enforcement of criminal statutory provisions with no substantial benefit to the general public.

In *Chaplinsky v. New Hampshire*, 315 U. S. 568, this Court stated:

> "The refusal of the state court to admit evidence of provocation and evidence bearing on the truth or falsity of the utterances is open to no constitutional objection. Whether the facts sought to be proved by such evidence constitute a defense to the charge or may be shown in mitigation are questions for the state court to determine. Our function is fulfilled by a determination that the challenged statute, on its face and as applied, does not contravene the Fourteenth Amendment."

Here the decision of the state court as to evidence concerning a defense is rejected.

B. No Issue of Fact Was Presented in This Appeal.

In appellant's "Jurisdictional Grounds" (Appellant's Op. Br. p. 2), it was asserted that "this appeal is taken pursuant to 28 U. S. C. 1257(2)." It was further pointed out that the basis of the appeal was the validity of a statute as being repugnant to the Constitution.

In appellant's notice of appeal to this court [R. 31-32] it was asserted that the questions presented by the appeal were: whether the ordinance was in violation of the Constitution, whether due process or equal protection was denied upon her arrest and trial, and whether the conviction had been obtained as a result of an unreasonable search and seizure. The last two questions clearly are not reviewable under the provisions of Section 1257(2), United States Code. The conclusion here reached is not based upon the invalidity of the ordinance but finds its basis solely upon a declared insufficiency of evidence.

It was stated by Mr. Justice Burton in *Haley v. Ohio*, 332 U. S. 596, that in testing due process the Supreme Court of the United States must first make sure of the facts, giving trial courts and juries that wide discretion in the determination of issues of fact to which a living record, as distinguished from a printed record, logically entitles them. That statement is most applicable here. There is not that degree of certainty here present in regard to the facts, established or assumed, upon which this Court should arrive at a conclusion such as was reached by the majority.

The opinion adopted by the majority of this Court bases its conclusion upon certain assumed facts, namely, that appellant had no knowledge of the requirement that she register under this ordinance, and that upon first be-

coming aware of her duty to register, appellant was given no opportunity to comply with the law and avoid its penalty. The truth or falsity of such assumed facts was never passed upon by the trier of the facts, yet the opinion herein rendered assumed such facts to be true, and assumed such facts to have been indisputably established. It is expressed therein that "We believe that actual knowledge of the duty to register and proof of the probability of such knowledge and subsequent failure to comply are necessary before a conviction under the ordinance can stand;" and "Where a person did not know of the duty to register and where there was no proof of the probability of such knowledge, he may not be convicted consistently with Due Process." By its conclusion this Court is assuming that the prosecution will be unable to offer proof of the fact of actual knowledge of her duty to register, as well as proof upon the issue of the probability that she did possess such knowledge.

This Court, in passing upon the application of the Fourteenth Amendment to the rule excluding illegally obtained evidence in *Irvine v. California*, 347 U. S. 128, upheld the conviction and afforded the state courts the opportunity of reconsidering their evidentiary rules, either adopting or rejecting the federal rule. Here there is a completely new application of an established and accepted rule of law, that ignorance of the law will not excuse. "Due Process", should be made applicable to prosecutions had under accepted rules of law and notice given to courts and prosecutors that there is to be a new application of an old rule of law governing the quantum of proof required in certain types of cases. As was stated in *Irvine, supra*: "But to upset state convictions even before the states have had adequate opportunity to adopt

or reject the rule would be an unwarranted use of federal power."

The majority opinion indicates that due process requires proof of actual knowledge of the law or a showing be made of the probability of such knowledge before a conviction will be allowed to stand. The question is therefore one of fact which should be determined by the trier of facts. Generally, questions of fact are determined by the trier of the facts and such determination is binding on a reviewing court. The reviewing court is only permitted to determine whether there is substantial evidence in the record to support the finding by the trier of facts.

In the case of *Ah Sin v. Wittman*, 198 U. S. 500, this Court upheld a municipal ordinance which made it unlawful to visit or resort to a barred or barricaded house or room where gambling implements are exhibited or exposed to view, and declared such ordinance did not deprive anyone of his liberty without due process of law even if it authorized a conviction for an innocent visit to such place. It was there stated:

> "Plaintiff in error seeks to set aside a criminal law of the state, not on the ground that it is unconstitutional on its face, not that it is discriminatory in tendency and ultimate actual operation as the ordinance was which was passed on in the Yick Wo case, but that it was made so by the manner of its administration. This is a matter of proof; and no fact should be omitted to make it out completely, when the power of a Federal court is invoked to interfere with the course of criminal justice of a state."

It has been declared by this Court that, although it stands ready to correct violations of constitutional rights, the burden of showing the essential unfairness violative

of such rights must be sustained by one who claims such injustice and seeks to have the result set aside, and it must be sustained not as a matter of speculation but as a demonstrable reality. (*United States v. Handy*, 351 U. S. 454.) No such showing was here made. The assumed state of facts is purely speculation.

When misapprehension of the law has led both courts below to adjudicate rights without considering essential facts in the light of the controlling law, the Supreme Court should vacate the judgment below and remand the case for further proceedings consistent with the principles laid down in the Supreme Court's opinion.

Maggio v. Zeitz, 333 U. S. 56.

The opinion herein rendered by the majority of this Court states that "Appellant, arrested on suspicion of another offense, . . ." No evidence of the cause of arrest was presented to the jury for their consideration of the question of whether or not the appellant had failed to registe. as an "ex-convict" under the Los Angeles ordinance. The statement on appeal, settled by the trial court, discloses that every element of the crime charged was proved without dispute, namely, that appellant had been convicted of two felonies; that she had been, and remained a resident of, the City of Los Angeles for more than five days; that at the time of her arrest her convictions had not been set aside in a manner provided by law, and that she had not registered with the police department prior to her arrest on the pending charge [R. 17]. This was also the conclusion of the appellate court [R. 30]. No attempt was made by appellant during the trial to establish or question the cause of her arrest [R. 17-18]. It was pointed out during oral argument to

this Court that, after the jury had returned a verdict of guilty and at the time of the making of a motion in arrest of judgment, appellant alluded to events which were alleged to have occurred at the time of her arrest [R. 19-20].

Here no question of illegal arrest, search, or seizure was involved. The evidence on behalf of the prosecution was introduced by way of stipulations [R. 17].

It is also stated in the opinion that "We must assume that appellant had no actual knowledge of the requirement that she register under this ordinance, as she offered proof of this defense which was refused." Here again the majority of the Court has assumed and accepted as an established fact that which in fact was not established and which finds as its basis merely statements made by counsel in an offer of proof during the trial and in support of a motion in arrest of judgment, made some six days after the verdict of the jury had been returned. It was pointed out in Appellee's Brief, page 25, that under California procedure a motion in arrest of judgment is directed only to the sufficiency of the accusatory pleading or jurisdiction of the trial court. It was not so used in this matter. Appellant attempted to interject issues of police brutality, illegal arrest, and violation of civil rights in connection with a question directed solely to the legal sufficiency of the accusatory pleading. Evidence was not pertinent to such question and therefore the offer of proof was properly rejected.

The affirmation by the highest state court of a conviction of crime conclusively establishes in the United States Supreme Court the conformity of such conviction to state law.

Bute v. Illinois, 333 U. S. 640.

The opinion of the majority further states, "Nevertheless, this registrant on first becoming aware of her duty to register was given no opportunity to comply with the law and avoid its penalty, even though her default was entirely innocent." Support for this assertion is also found only in the statement of counsel, not in evidence, made in connection with the motion in arrest of judgment [R. 20]. This assumption is accepted as true in the face of appellee's statement set forth in the Supplemental Brief of Appellee, page 3. The prosecution was and is able to refute conclusively those facts. As stated in the letter from the Probation Officer, Appendix A, the appellant was advised to register October 31, 1951, and the evidence shows that on February 2, 1955, she was not registered. This Court could have assumed from such letter that appellant did in fact have actual knowledge of the ordinance and of her duty to register. This assumption is as reasonable and logical as the one accepted. The issue of credibility of appellant as a witness in that regard was not passed upon by the jury.

The opinion further states that "Where a person did not know of the duty to register and where there was no proof of the probability of such knowledge, . . ." Here again it is assumed and accepted as an established fact that appellant did not know of the duty to register, and it is also assumed that the prosecution was unable to prove "the probability of such knowledge." Appellee submits that, as shown by the letter from the Probation Officer heretofore referred to, the prosecution could have, if required, introduced either in its case in chief or in rebuttal of appellant's denial of knowledge, evidence by the Probation Officer that appellant was personally advised of her duty to register. The record before this

Court does not support the conclusion that the facts therein presented deprived appellant of due process. It should be noted that the material facts sought to be introduced by evidence were stipulated to at the time of trial [R. 17]. There was no need at any time during said trial to refute by witnesses the alleged facts which are now accepted as having been established.

Conclusion.

It is respectfully requested that a rehearing be granted so that the issues may be more clearly pointed out; that the opinion be modified concluding that under the record here presented there is no showing that appellant was denied due process.

Respectfully submitted,

ROGER ARNEBERGH,
City Attorney,
DONALD M. REDWINE,
Assistant City Attorney,
PHILIP E. GREY,
Deputy City Attorney,
Attorneys for Appellee.

Certificate of Counsel.

I hereby certify that the foregoing Petition for Rehearing and/or modification of Opinion is presented in good faith and not for delay.

PHILIP E. GREY.